

Presented by: The Manager  
Introduced: 12/16/13  
Drafted by: Bond Counsel

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 2014-01**

**An Ordinance Providing for the Issuance and Sale of Port Revenue Bonds in one or more series in the Aggregate Principal Amount of Not to Exceed \$29,000,000; Providing for the Form and Terms of the Bonds; Providing a Method of Payment Therefor; Reserving the Right to Issue Revenue Bonds on a Parity with the Bonds upon Compliance with Certain Conditions; and Repealing and Rescinding Ordinance Serial No. 2012-28.**

WHEREAS, the City and Borough of Juneau, Alaska (the "City and Borough") maintains public facilities for the transfer of tourists visiting the City and Borough and a system of wharves and public parks; and

WHEREAS, certain of those facilities are in need of expansion and improvement (the "Project"); and

WHEREAS, the City and Borough is authorized by its Home Rule Charter to issue revenue bonds for capital project purposes without a vote of the electors; and

WHEREAS, the bonds herein authorized will be payable from certain fees imposed upon users of the City and Borough's ports and harbors (hereinafter defined as "Port Development Fee Revenues"); and

WHEREAS, the Finance Director will hold a public hearing on the issuance of any series of the bonds herein authorized that will be private activity bonds as required by Section 147(f) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Assembly finds that it is in the best interest of the Borough to sell the bonds herein authorized in one or more series to the Alaska Municipal Bond Bank (the "Bond Bank") on the terms and conditions set forth herein and in loan agreement(s) between the City and Borough and the Bond Bank, as authorized by this ordinance;

NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

**Section 1. Classification.** This ordinance is a noncode ordinance.

**Section 2. Definitions.** As used in this ordinance, unless a different meaning clearly appears from the context:

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**Accreted Value** means with respect to any Capital Appreciation Bonds, as of any date of calculation, the sum of the amount set forth in the proceedings authorizing their issuance as the amount representing the initial principal amount of such Capital Appreciation Bonds plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date. The Accreted Value shall be determined in accordance with the provisions of the ordinance authorizing the issuance of such Balloon Maturity Bonds.

**Annual Debt Service** means the total amount of Debt Service for any Parity Bond or series of Parity Bonds or other evidences of indebtedness payable from Port Development Fee Revenues in any fiscal year or Base Period.

**Assembly** means the Assembly of the City and Borough of Juneau as the same shall be duly and regularly constituted from time to time.

**Balloon Maturity Bonds** means any evidences of indebtedness of the City and Borough payable from Port Development Fee Revenues which are so designated in the proceedings pursuant to which such indebtedness is incurred.

**Base Period** means each of the two most recently completed fiscal years for which audited financial statements are available within the 36-month period immediately preceding the date of issuance of an additional series of Future Parity Bonds.

**Bonds** means the not to exceed \$29,000,000 par value City and Borough of Juneau, Alaska, Port Revenue Bond, 20\_\_ [A/B] [(AMT/Non-AMT)] authorized to be issued in one or more series 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 bonds to be issued by the Bond Bank to provide funds to be loaned to the City and Borough pursuant to the Loan Agreement.

**Bond Bank Reserve Agreement** means the Reserve Depository Agreement, between the Bond Bank Trustee and the City and Borough.

**Bond Bank Trustee** means The Bank of New York Mellon Trust Company, N.A., as the trustee for the Bond Bank under the terms of the 2005 General Obligation Bond Resolution adopted by the Board of Directors of the Bond Bank on July 13, 2005 and shall include any successor thereto as provided in said Resolution.

**Bond Fund** means the "Port Revenue Bond Debt Service [Fund][Account]" maintained in the office of the Finance Director pursuant to this ordinance.

**Bond Register** means the registration books for the Bonds, maintained by the Bond Registrar, for the purpose of complying with the requirements of Section 149 of the Code and listing, *inter alia*, the names and addresses of all registered owners of the Bonds.

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

**Capital Appreciation Bonds** means any Future Parity Bonds all or a portion of the interest on which is compounded, accumulated and payable only upon redemption or on the maturity date of such Capital Appreciation Bonds. If so provided in the proceedings authorizing their issuance, Future Parity Bonds may be deemed to be Capital Appreciation Bonds for only a portion of their term. On the date on which Future Parity Bonds no longer are Capital Appreciation Bonds, they shall be deemed outstanding in a principal amount equal to their Accreted Value.

**City and Borough** means the City and Borough of Juneau, a municipal corporation organized and existing under the laws of the State of Alaska.

**City and Borough Representative** means the City Manager or such other official or employee of the City and Borough designated in writing by the City Manager.

**City Manager** means the city manager or interim city manager of the City and Borough.

**Code** means the United States Internal Revenue Code of 1986, as amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

**Consultant** means at any time an independent municipal financial consultant appointed by the City and Borough to perform the duties of the Consultant as required by this ordinance. For the purposes of delivering any certificate required by Section 15 hereof and making the calculation required by Section 15 hereof, the term Consultant shall also include any independent public accounting firm appointed by the City and Borough to make such calculation or to provide such certificate.

**Credit Facility** means any Qualified Letter of Credit or Qualified Insurance.

**Debt Service** means, for any period of time,

(1) with respect to any outstanding Capital Appreciation Bonds which are not designated as Balloon Maturity Bonds in the proceedings authorizing their issuance, the principal amount thereof shall be equal to the Accreted Value thereof maturing or scheduled for redemption in such period, and the interest payable during such period;

(2) with respect to any outstanding Fixed Rate Bonds, an amount equal to (A) the principal amount of such Fixed Rate Bonds due or subject to mandatory redemption during such

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period and for which no sinking fund installments have been established, (B) the amount of any payments required to be made during such period into any sinking fund established for the payment of any such Fixed Rate Bonds, plus (C) all interest payable during such period on any such outstanding Fixed Rate Bonds and with respect to Fixed Rate Bonds with mandatory sinking fund requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such Fixed Rate Bonds on the date specified in the proceedings authorizing such Fixed Rate Bonds; and

(3) with respect to all other series of Parity Bonds, other than Fixed Rate Bonds, Capital Appreciation Bonds, specifically including but not limited to Balloon Maturity Bonds and Parity Bonds bearing variable rates of interest, an amount for any period equal to the amount which would have been payable for principal and interest on such Parity Bonds during such period computed on the assumption that the amount of Parity Bonds as of the date of such computation would be amortized (i) in accordance with the mandatory redemption provisions, if any, set forth in the proceedings authorizing the issuance of such Parity Bonds, or if mandatory redemption provisions are not provided, during a period commencing on the date of computation and ending on the date 30 years after the date of issuance (ii) at an interest rate equal to the yield to maturity set forth in the 40-Bond Index published in the edition of *The Bond Buyer* (or comparable publication or such other similar index selected by the City and Borough) and published within ten days prior to the date of calculation or, if such calculation is being made in connection with the certificate required by Section 15 hereof, then within ten days of such certificate, (iii) to provide for essentially level annual debt service of principal and interest over such period. Debt Service shall be net of any interest funded out of Bond proceeds. Debt Service shall include reimbursement obligations to providers of Credit Facilities to the extent authorized by ordinance or resolution.

**Federal Tax Certificate** means the certificate(s) executed on behalf of the City and Borough upon the issuance of the Bonds and including certain representations regarding the use and application of the Bond proceeds and the payment of rebatable arbitrage, if any, with respect to the Bonds.

**Finance Director** means the director of the finance department or interim director of the finance department of the City and Borough.

**Fitch** means Fitch, Inc., organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such organization shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, **Fitch** shall be deemed to refer to any other nationally recognized securities rating agency designated by the City Manager or his/her designee.

**Fixed Rate Bonds** means those Parity Bonds other than Capital Appreciation Bonds or Balloon Maturity Bonds issued under an ordinance in which the rate of interest on such Parity Bonds is fixed and determinable through their final maturity or for a specified period of time. If so provided in the proceedings authorizing their issuance, Parity Bonds may be deemed to be Fixed Rate Bonds for only a portion of their term.

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**Future Parity Bonds** means any revenue bonds which the City and Borough may hereafter issue having a lien upon the Port Development Fee Revenues for the payment of the principal thereof and interest thereon equal to the lien of the Bonds upon the Port Development Fee Revenues.

**Governmental Components** means the completion of the seawalk previously approved by this Assembly.

**Governmental Project Fund** means the fund or account into which certain net proceeds of the Bonds issued for the Governmental Components shall be deposited.

**Government Obligations** means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America and bank certificates of deposit secured by such obligations.

**Loan Agreement** means the Loan Agreement(s) for the Bonds by and between the City and Borough and the Bond Bank authorized to be entered into pursuant to Section 9 of this ordinance.

**Maximum Annual Debt Service** means highest dollar amount of Annual Debt Service in any fiscal year or Base Period for all outstanding Parity Bonds and/or for all subordinate lien evidences of indebtedness secured by Port Development Fee Revenues, as the context requires.

**Moody's** means Moody's Investors Service, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, **Moody's** shall be deemed to refer to any other nationally recognized securities rating agency designated by the City Manager or his/her designee.

**Parity Bonds** means the Bonds and any Future Parity Bonds.

**Parity Requirement** means (i) historical Port Development Fee Revenues for the Base Period at least equal to or greater than 120% of Maximum Annual Debt Service for all Parity Bonds (including the Future Parity Bonds then proposed to be issued) or (ii) Port Development Fee Revenues, as adjusted by a Consultant, described in Section 15 of this ordinance, equal to at least 135% of Maximum Annual Debt Service for all Parity Bonds (including the Future Parity Bonds then proposed to be issued), commencing with the first fiscal year after the anticipated completion of the facilities to be financed with the proceeds of the Future Parity Bonds.

**Port Development Fee Fund** means the special fund or subaccount of the City and Borough into which all Port Development Fee Revenues are deposited as collected.

**Port Development Fee Revenues** means the port development fee imposed by Resolution No. 2552 of the Assembly and shall include any fees imposed by the City and Borough Assembly by ordinance or resolution to replace those specific fees.

**Port Facilities** mean the port facilities owned by the City and Borough and the facilities affected by the use of the harbors of the City and Borough.

**Principal and Interest Account** means the subaccount of that name created within the Bond Fund pursuant to Section 8 of this ordinance.

**Private Activity Components** means the completion of the cruise ship berth enhancement project and related uplands previously approved by this Assembly.

**Private Activity Project Fund** means the fund or account into which certain net proceeds of the Bonds issued for the Private Activity Components shall be deposited.

**Project** means, collectively, the Governmental Components and the Private Activity Components.

**Qualified Insurance** means any non-cancelable municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies) which insurance company or companies, as of the time of issuance of such policy or surety bond, are currently rated in one of the two highest Rating Categories by two of the Rating Agencies.

**Qualified Letter of Credit** means any irrevocable letter of credit issued by a financial institution for the account of the City and Borough on behalf of registered owners of the Bonds, which institution maintains an office, agency or branch in the United States and as of the time of issuance of such letter of credit, is currently rated in one of the two highest Rating Categories by a Rating Agency.

**Rate Covenant** means Port Development Fee Revenues in each fiscal year at least equal to 120% of the amounts required in such fiscal year to be paid as scheduled debt service (principal and interest) on all Parity Bonds.

**Rating Agency** means Moody's or S&P or Fitch.

**Rating Category** means the generic rating categories of the Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

**Registered Owner** means the person named as the registered owner of a Bond in the Bond Register.

**Reserve Account** means the Reserve Account created in the Bond Fund pursuant to Section 8 of this ordinance.

**Reserve Requirement** means, with respect to Parity Bonds outstanding, the lesser of (a) 125% of Average Annual Debt Service. (b) 10% of the net proceeds of each series of Parity Bonds secured by the Reserve Account, or (c) Maximum Annual Debt Service.

**S&P** means Standard & Poor's, a Division of The McGraw Hill Companies, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, **S&P** shall be deemed to refer to any other nationally recognized securities rating agency designated by the City Manager or his/her designee.

**State** means the State of Alaska.

**Rules of Interpretation.** In this ordinance, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect;

(e) All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

(f) Words importing the singular number include the plural number and vice versa.

**Section 3. The Project.** This Assembly hereby ratifies and approves the completion of the cruise ship berth enhancement project, related uplands ("Private Activity Components") and the seawalk ("Governmental Components" and together with the Private Activity Components, the "Project"). The Project has and will be undertaken in accordance with specifications and contracts for acquisition and construction approved by the Assembly from time to time.

It is hereby provided that said Project shall be subject to such changes as to details of design or any other details of said Project as may be authorized by the Assembly either prior to or during the actual course of construction.

The City and Borough may proceed with the construction and installation of the Project as herein authorized, either alone or in conjunction with the construction of other facilities, and in whole, or in successive parts or units from time to time as may be found advisable.

**Section 4. Costs of the Project.** The estimated cost of the Project is hereby declared to be, as near as may be, the sum of up to \$92,550,000 which is expected to be paid from port revenues, fees and state grants, in addition to the proceeds of the Bonds.

**Section 5. Authorization of Bonds.**

(a) *Authorization.* The City and Borough shall issue and sell not to exceed \$29,000,000 of its port revenue bonds (the "Bonds") in one or more series for the purpose of providing permanent financing for the construction of the Project, funding the Reserve Requirement and paying the costs of issuance of the Bonds.

(b) *Bond Details.* The Bonds shall be designated as the "City and Borough of Juneau, Alaska Port Revenue Bond, 20\_\_ [A/B] [(AMT/Non-AMT)]," shall be dated as of the date established pursuant to Section 9, shall be fully registered as to both principal and interest, shall be numbered separately in such manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification, and shall bear interest from their date payable on the dates set forth in each respective approved Loan Agreement, and shall come due on the dates set forth in the approved Loan Agreement of the following years in the following estimated aggregate principal installments:



Maturity Year	Principal Amount*
2015	\$ 555,000
2016	590,000
2017	605,000
2018	625,000
2019	650,000
2020	675,000
2021	710,000
2022	745,000
2023	775,000
2024	815,000
2025	860,000
2026	900,000
2027	950,000
2028	995,000
2029	1,050,000
2030	1,095,000
2031	1,155,000
2032	1,215,000
2033	1,275,000
2034	1,340,000
2035	1,410,000
2036	1,485,000
2037	1,550,000
2038	1,630,000
2039	2,115,000
2040	1,835,000

Total: \$27,605,000\*

\* Principal maturities do not add to \$29,000,000, in anticipation of selling Bonds with original issue premium, generating not more than \$29,000,000 in net proceeds.

If the Bonds are sold in more than one series, the principal maturities of a series shall be applied to reduce the foregoing schedule as provided in the resolution approving the sale of that series; provided that in the aggregate the foregoing estimated principal amounts may increase or decrease in any year by 25%, and *provided, further*, in the aggregate, the Bonds shall be issued in principal amounts that provide no more than \$29,000,000 (principal amount plus premium, if any, less costs of issuance) in net proceeds or \$29,000,000 in principal amount, whichever is less.

**Section 6. Registration, Exchange and Payments.** The Finance Director shall act as authenticating agent, paying agent and registrar for the Bonds (collectively, the "Bond Registrar"). The principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be calculated on the basis of a 360-day year and twelve 30-day months. Interest on the Bonds shall be paid by check or draft of the Bond

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Registrar mailed (on the date such interest is due) to the Registered Owners or nominees at the addresses appearing on the Bond Register on the fifteenth day of the month preceding each interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds to the Bond Registrar by the registered owners or nominees at the office of the Bond Registrar. Notwithstanding the foregoing, so long as the Bond Bank is the Registered Owner of the Bonds, payments of principal of and interest on the Bonds shall be made to the Bond Bank in accordance with each Loan Agreement.

The Bonds may be transferred only on the Bond Register maintained by the Bond Registrar for that purpose upon the surrender thereof by the registered owner or nominee or his/her duly authorized agent and only if endorsed in the manner provided thereon, and thereupon a new fully registered Bond of like series, principal amount, maturity and interest rates shall be issued to the transferee in exchange therefor. Upon surrender thereof to the Bond Registrar, the Bond is interchangeable for a bond or bonds in any authorized denomination of an equal aggregate principal amount and of the same series, interest rates and maturities. Such transfer or exchange shall be without cost to the Registered Owner or transferee.

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

**Section 7. Priority of Payments from Port Development Fee Fund.** There is maintained a special revenue fund of the City and Borough known as the "Port Development Fee Fund" into which all Port Development Fee Revenues are deposited. All Port Development Fee Revenues shall be deposited in the Port Development Fee Fund. The Port Development Fee Fund shall be held separate and apart from all other funds and accounts of the City and Borough and the Port Development Fee Revenues deposited in such Fund shall be used only for the following purposes and in the following order of priority:

First, to pay the interest on any Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or Qualified Insurance secures the payment of interest on Parity Bonds and the proceedings authorizing such Parity Bonds provides for such reimbursement;

Second, to pay the principal of any Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or Qualified Insurance secures the payment of principal of Parity Bonds and the proceedings authorizing such Parity Bonds provides for such reimbursement;

Third, to make all payments required to be made into the Reserve Account to secure the payment of the principal of and interest on the Bonds and to make all payments required to be made into any reserve account hereafter established to secure the payment of the principal of or interest on any Future Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or Qualified Insurance fulfills

the Reserve Requirement in whole or in part and the proceedings authorizing such Parity Bonds provides for such reimbursement;

Fourth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service fund or reserve fund created to pay and secure the payment of the principal of and interest on any other revenue bonds or revenue warrants of the City and Borough having a lien upon the Port Development Fee Revenues junior and inferior to the lien thereon for the payment of the principal of and interest on Parity Bonds; and

Fifth, to retire by redemption or purchase any outstanding revenue bonds or revenue warrants of the City and Borough, remaining Port Development Fee Revenues may also be used to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the Port Facilities, or for any other lawful City and Borough purposes.

**Section 8. Bond Fund.** A special account of the City and Borough designated as the "Port Revenue Bond Debt Service [Fund][Account]" (the "Bond Fund") has heretofore been created in the office of the Finance Director for the purpose of paying and securing the payment of the Bonds and all Parity Bonds. The Bond Fund shall be held separate and apart from all other accounts of the City and Borough and shall be a trust account for the owner of Parity Bonds. The Bond Fund shall be divided into two separate accounts: a Principal and Interest Account for the payment of the principal of and interest on Parity Bonds and the payment of redemption premium, if any, whether due at maturity or redemption prior to maturity and a Reserve Account for the purpose of additionally securing the repayment of Parity Bonds.

(a) *Payments Into Principal and Interest Account.* The Finance Director may direct all or a portion of the original issue premium to be deposited in the Principal and Interest Account. As long as any Parity Bonds remain outstanding, the City and Borough hereby irrevocably obligates and binds itself to set aside and pay from the Bond Fund into the Principal and Interest Account those amounts necessary, together with such other funds as are on hand and available in the Principal and Interest Account, to pay the interest or principal and interest next coming due on outstanding Parity Bonds. Such payments from the Port Development Fee Fund shall be made on or prior to the due date for such installment of principal and interest.

(b) *Priority of Lien of Payments into Principal and Interest Account.* Said amounts so pledged to be paid into the Bond Fund with respect to the Bonds are hereby declared to be a prior lien and charge upon the Port Development Fee Revenues superior to all other charges of any kind or nature whatsoever, except that the amounts so pledged are of equal lien to the lien and charge thereon of any Future Parity Bonds.

(c) *Reserve Account.* A Reserve Account (the "Reserve Account") is hereby authorized to be created in the Bond Fund for the purpose of securing the payment of the principal of and interest on all Parity Bonds. The City and Borough hereby covenants to deposit into the Reserve Account on the date of issuance of the Bonds from Bond proceeds and/or from

funds of the City and Borough legally available therefor an amount equal to the Reserve Requirement with respect to the Bonds.

The City and Borough further covenants and agrees that when said required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Reserve Requirement with respect to all outstanding Parity Bonds. Whenever there is an insufficient amount in the Bond Fund, including the Reserve Account and the Principal and Interest Account to pay the principal of and interest on all outstanding Parity Bonds when due, the money in the Reserve Account may be used to pay such principal and interest. Money in the Reserve Account may be withdrawn to redeem and retire, and to pay the interest due to such date of redemption on any outstanding Bonds, so long as the money left remaining on deposit in the Reserve Account is equal to the Reserve Requirement with respect to all outstanding Parity Bonds.

The City and Borough may satisfy the Reserve Requirement, in whole or in part with a Qualified Letter of Credit or Qualified Insurance. In making the payments and credits to the Reserve Account required by this subsection (c), to the extent that the City and Borough has obtained Qualified Insurance or a Qualified Letter of Credit for specific amounts required pursuant to this section to be paid out of the Reserve Account, such amounts so covered by Qualified Insurance or a Qualified Letter of Credit shall be credited against the amounts required to be maintained in the Reserve Account by this subsection (c) to the extent that such payments and credits to be made are insured by an insurance company, or guaranteed by a letter of credit from a financial institution. A Qualified Letter of Credit shall not be cancelable on less than 30 days' notice to the City and Borough, and Qualified Insurance shall be noncancellable. In the event of any cancellation of a Qualified Letter of Credit, the Reserve Account shall be funded in accordance with the third paragraph of this subsection (c) as if the Parity Bonds for whose benefit the Qualified Letter of Credit was issued which then remain outstanding had been issued on the date of such notice of cancellation.

In the event that the City and Borough elects to meet the Reserve Requirement through the use of a Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device, the City and Borough may contract with the entity providing such Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device that the City and Borough's reimbursement obligation, if any, to such entity shall be made from Port Development Fee Revenues available after the payments described in Paragraphs First through Third in Section 7 hereof have been made.

In the event a deficiency in the Principal and Interest Account shall occur, the deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom for that purpose and by 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, and if a deficiency still exists immediately prior to an interest payment date and after the withdrawal of cash, the City and Borough shall then draw from any Qualified Letter of Credit, Qualified Insurance, or other equivalent credit facility that secures the Parity Bonds in sufficient amount to make up the deficiency. Such draw shall be made at such times and under such

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conditions as the agreement for such Qualified Letter of Credit or such Qualified Insurance shall provide. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up within one year of the date of withdrawal from Port Development Fee Revenues after making necessary provision for making the payments described in Paragraphs First through Third in Section 7 hereof.

(d) *Application and Investment of Moneys in the Bond Fund.* Money in the Principal and Interest Account not needed to pay the interest or principal installment and interest next coming due on Parity Bonds may be used to prepay Parity Bonds. Money in the Bond Fund therein may be invested in any legal investment for the funds of the City and Borough. All interest earned and income derived by virtue of such investments shall remain in the Bond Fund (or respective account therein) and be used to meet the required deposits into any account therein.

**Section 9. Sale of Bonds.** The City Manager or his/her designee is authorized to negotiate and complete the sale of the Bonds in one or more series to the Bond Bank on terms and conditions consistent with this ordinance and the respective Loan Agreement for the Bonds. Following the sale of the Bond Bank Bonds for a series of Bonds, such terms and conditions, including the final principal amount, date, principal installment payment schedule, interest rates, payment dates and prepayment provisions, all as provided for in this ordinance, shall be set forth in a Loan Agreement, all subject to the Assembly's approval by resolution, which resolution may, at the option of the Assembly, provide for delegation within parameters approved by the Assembly.

**Section 10. Undertaking to Provide Ongoing Disclosure.** The City and Borough will execute a certificate for ongoing disclosure in form and substance satisfactory to the purchaser of the Bonds, and the City Manager or his/her designee is hereby authorized and directed to execute such certificate.

**Section 11. Insurance.** The Bond Bank may, with the consent of the City and Borough and on terms and conditions acceptable to the City and Borough, obtain a policy of municipal bond insurance guaranteeing the payment when due of the principal of and interest on a series of the Bond Bank's Bonds issued to provide funds for the loan to the City and Borough pursuant to a Loan Agreement. By the Loan Agreement, the City Manager or his/her designee may approve any such policy of municipal bond insurance and authorize all other officers, agents, attorneys, and employees of the City and Borough to cooperate with the bond insurer in preparing such additional agreements, certificates, and other documentation on behalf of the City and Borough, consistent with this ordinance, as shall be necessary or advisable in providing for such policy of municipal bond insurance.

The City Manager or his/her designee also may obtain a surety policy in order to satisfy the Reserve Requirement on the condition that the surety policy meets the requirements of Qualified Insurance on terms and conditions determined to be acceptable to the City Manager or his/her designee. The City Manager or his/her designee may execute such additional agreements or certificates and provide such documentation to the issuer of such surety policy as shall be necessary or advisable in providing for such surety policy.

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In connection with the initial issuance and sale of the Bonds to the Bond Bank, and notwithstanding the provisions of Section 19 of this ordinance to the contrary, the Assembly may by resolution modify any of the covenants or other provisions of this ordinance as may be required by a provider of bond insurance or a surety policy for the Bond Bank's Bonds.

**Section 12. Disposition of Proceeds of the Bonds.** The Finance Director may direct that all or a portion of the original issue premium also be deposited in the Principal and Interest Account. Unless the Reserve Requirement is satisfied with a Credit Facility or other port revenues, a portion of the Bond proceeds in the amount designated by the Finance Director shall be deposited in the Reserve Account in order to meet the Reserve Requirement. The City and Borough shall maintain a fund or account for the Governmental Components (the "Governmental Project Fund") and a fund or account for the Private Activity Components (the "Private Activity Project Fund"). The balance of the proceeds of sale of the Bonds of a series shall be deposited in the Governmental Project Fund or the Private Activity Project Fund, as applicable, or a subaccount therein and shall be expended solely to pay the cost of issuing and selling that series of Bonds and, together with other available moneys of the City and Borough, shall be used to reimburse the City and Borough for funds already distributed for the costs of the Governmental Components or the Private Activity Components, respectively, and to pay the costs of completing the Governmental Components or the Private Activity Components, as the case may be. Money in the Governmental Project Fund and the Private Activity Project Fund shall be invested by the Finance Director, pending disbursement, in any legal investment for City and Borough funds, and interest earnings shall be deposited in the respective Project Fund.

**Section 13. Defeasance.** In the event that money and/or noncallable Government Obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times and bearing interest to be earned thereon in amounts (together with such money, if any) sufficient to redeem and retire part or all of the Bonds in accordance with the its terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund or any account therein for the payment of the principal of and interest on the Bonds or portion thereof so provided for and the Bonds or portion thereof shall then cease to be entitled to any lien, benefit or security of this ordinance, except the right to receive the accounts so set aside and pledged, and the Bonds or portion thereof shall no longer be deemed to be outstanding hereunder.

**Section 14. Specific Covenants.** The City and Borough hereby covenants and agrees with the owners of the Bonds that for as long as the Bonds remain outstanding as follows:

(a) *Rate Covenant.* The City and Borough will maintain the rates established in the ordinance and resolution authorizing and imposing the fees that constitute the Port Development Fee Revenues and will collect such amounts for so long as any Bonds are outstanding as will maintain the Rate Covenant. Nothing in this Rate Covenant shall preclude the City and Borough from increasing the fees or otherwise modifying the Port development fee as long as there is a net increase in the Port development fee as a result of such modification.

(b) *Port Facilities Maintenance.* The City and Borough will at all times maintain and keep the Port Facilities in good repair, working order and condition, and also will at all times operate such facilities and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) *Books and Records.* The City and Borough will, while the Bonds remain outstanding, keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Port Facilities, and it will furnish the original purchaser or purchasers of the Bonds or any subsequent owner or owners thereof, at the written request of such owner or owners, complete operating and income statements of the Port Facilities in reasonable detail covering any fiscal year, showing the financial condition of the Port Facilities and compliance with the terms and conditions of this ordinance, not more than 120 days after the close of such fiscal year, and it will grant any owner or owners of at least 25% of the outstanding Bonds the right at all reasonable times to inspect the entire Port Facilities and all records, accounts and data of the City and Borough relating thereto. Upon request of any owner of any of said Bonds, it will also furnish to such owner a copy of the most recently completed audit of the City and Borough's accounts.

(d) *Ordinance a Contract.* This ordinance shall constitute a contract with the registered owners of the Bonds, and upon any default hereunder, said owner shall have the right to institute a mandamus action in any court of competent jurisdiction to compel performance by the City and Borough in accordance with the terms of this ordinance.

(e) *Tax Covenants.* The Finance Director is an officer of the City and Borough whose duties include the holding of such hearings as may be required under the Code in order to assure the tax exempt status of the Bonds. The Finance Director will hold a public hearing on the issuance of the Bonds for the Private Activity Components, pursuant to published notice in a newspaper of general circulation in the City and Borough. The City and Borough covenants to undertake all actions required to maintain the tax-exempt status of interest on the Bonds under Section 103 of the Code as set forth in the Federal Tax Certificate(s) that will be executed at the closing for the Bonds.

The City and Borough has not designated the Bonds as "qualified tax-exempt obligations" under Section 265(b)(3) of the Code for banks, thrift institutions and other financial institutions.

#### **Section 15. Future Parity Bonds.**

(a) *Conditions upon the Issuance of Future Parity Bonds.* As long as the Bonds remain outstanding, the City and Borough hereby further covenants and agrees that it will not issue any obligations having a lien on the Port Development Fee Revenues prior to the lien thereon of the Bonds and further that it will not issue any Future Parity Bonds except in accordance with the conditions of this Section 15. The City and Borough hereby reserves the right to issue additional revenue obligations, which shall constitute a charge and lien upon the Port Development Fee Revenues equal to the lien thereon of the Bonds. Except as provided in

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subsection (b) below, the City and Borough shall not issue any series of Future Parity Bonds or incur any additional indebtedness with a parity lien or charge on Port Development Fee Revenues (*i.e.*, on a parity of lien with Parity Bonds at the time outstanding) unless:

(1) the City and Borough shall not have been in default of its Rate Covenant for the immediately preceding fiscal year;

(2) The ordinance authorizing the issuance of such Future Parity Bonds shall provide that the Reserve Requirement shall be funded no later than the date of delivery of the *Future Parity Bonds and shall include the covenants set forth in Section 14 of this ordinance* (including the tax covenant, to the extent applicable); and

(3) there shall have been filed a certificate (prepared as described in subsection (c) or (d) below) demonstrating fulfillment of the Parity Requirement, commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued no longer will be paid from the proceeds of such series of Future Parity Bonds.

(b) *No Certificate Required.* The certificate described in the foregoing subsection (a)(3) shall not be required as a condition to the issuance of Future Parity Bonds:

(1) if the Future Parity Bonds being issued are for the purpose of refunding outstanding Parity Bonds and the annual debt service requirements for each year in which Parity Bonds are then outstanding are not increased as a result of the refunding; or

(2) if the Future Parity Bonds are being issued to pay costs of construction of facilities of the Port Facilities for which Parity Bonds have been issued previously and the principal amount of such Future Parity Bonds being issued for completion purposes does not exceed an amount equal to an aggregate of 15% of the principal amount of Parity Bonds theretofore issued for such facilities and reasonably allocable to the facilities to be completed as shown in a written certificate of the City and Borough Representative, and there is delivered a Consultant's certificate stating that the nature and purpose of such facilities has not materially changed.

(c) *Certificate of the City and Borough Without A Consultant.* If required pursuant to the foregoing subsection (a)(3), a certificate may be delivered by the City and Borough (executed by the City and Borough Representative) without a Consultant if Port Development Fee Revenues for the Base Period (confirmed by an independent auditor) conclusively demonstrate that the Parity Requirement will be fulfilled commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued will not be paid from the proceeds of such series of Future Parity Bonds.

(d) *Certificate of a Consultant.* Unless compliance with the requirements of subsection (a)(3) have been otherwise satisfied (as provided in (b) or (c) above), compliance with the Parity Requirement shall be demonstrated conclusively by a certificate of a Consultant.

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In making the computations of Port Development Fee Revenues for the purpose of certifying compliance with the Parity Requirement, the Consultant shall use as a basis the Port Development Fee Revenues for the Base Period. Such Port Development Fee Revenues shall be determined by adding the following:

(1) The historical Port Development Fee Revenues of the City and Borough for any 12 consecutive months out of the 30 months immediately preceding the month of delivery of the Future Parity Bonds being issued as determined by a Consultant; and

(2) The estimated annual revenue to be derived from any additional fees and charges that have been established by the Assembly as new Port Development Fee Revenues that have not been previously included in any of the sources of net revenue described in this subsection (d).

(e) *Subordinate Lien Obligations.* Nothing herein contained shall prevent the City and Borough from issuing revenue bonds or other obligations which are a charge upon the Port Development Fee Revenues junior or inferior to the payments required by this ordinance to be made out of such Revenue to pay and secure the payment of any outstanding Parity Bonds.

(f) *Refunding Obligations.* Nothing herein contained shall prevent the City and Borough from issuing revenue bonds to refund maturing Parity Bonds for the payment of which moneys are not otherwise available.

**Section 16. Lost, Stolen or Destroyed Bonds.** In case a Bond shall be lost, stolen or destroyed, the Bond Registrar may authenticate and deliver a new Bond of like amount, date and tenor to the owner thereof upon the owner's paying the expenses and charges of the Bond Registrar and the City and Borough in connection therewith and upon his filing with the Bond Registrar and the City and Borough evidence satisfactory to both that such Bond was actually lost, stolen or destroyed and of his ownership thereof, and upon furnishing the City and Borough and the Bond Registrar with indemnity satisfactory to both.

Section 17. Form of Bonds and Registration Certificate. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. \_\_\_\_\_ \$ \_\_\_\_\_

STATE OF ALASKA

CITY AND BOROUGH OF JUNEAU  
PORT REVENUE BOND, 20\_\_ [A/B] [(AMT/Non-AMT)]

INTEREST RATES: See Below

FINAL MATURITY DATE:

REGISTERED OWNER: ALASKA MUNICIPAL BOND BANK

PRINCIPAL AMOUNT:

THE CITY AND BOROUGH OF JUNEAU, ALASKA (the "City and Borough"), 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) and to pay interest thereon from \_\_\_\_\_, 20\_\_, or the most recent date to which interest has been paid or duly provided for until payment of this bond at the interest rates set forth below, payable on \_\_\_\_\_ 1, 20\_\_ and semiannually thereafter on the first day of each \_\_\_\_\_ and \_\_\_\_\_.

Year of Principal Installment Payment (_____ 1)	Principal Installment Amount	Interest Rate
---	---------------------------------	------------------

\$

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 shall be paid by check or draft mailed to the Registered Owner at the address appearing on the Bond Register on the 15<sup>th</sup> day of the month preceding the interest payment date, and principal of this bond shall be payable upon presentation and surrender of this bond by the Registered Owner at the principal office of the Finance Director of the City and Borough of Juneau, Alaska (the "Bond Registrar"). Notwithstanding the foregoing, so long as the Bond Bank is the Registered Owner of this bond,

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payments of principal of and interest on the Bond shall be made to the Bond Bank in accordance with the Loan Agreement.

This bond is a port revenue bond of the Borough and is issued pursuant to Ordinance Serial No. 2014-01 (the "Bond Ordinance") for the purpose of making certain improvements to the Port Facilities.

The bond is subject to prepayment as described in the Loan Agreement.

The City and Borough hereby covenants and agrees with the owner and holder of this bond that it will keep and perform all the covenants of this bond and the Bond Ordinance.

The City and Borough does hereby pledge and bind itself to set aside from such Port Development Fee Revenues, and to pay into said Bond Fund the various amounts required by the Bond Ordinance to be paid into and maintained in said Fund, all within the times provided by said Bond Ordinance.

To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from the Port Development Fee Fund out of the Port Development Fee Revenues into the Bond Fund and the account therein shall be a lien and charge thereon equal in rank to the lien and charge upon said revenue of the amounts required to pay and secure the payment of any port revenue bonds of the City and Borough hereafter issued on a parity with the bonds of this issue and superior to all other liens and charges of any kind or nature.

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 Bond Registrar.

[This bond [is][is not] a "private activity bond" as such term is defined in the Internal Revenue Cod of 1986, as amended (the "Code"). ]This bond is not a "qualified tax-exempt obligation" under Section 265(b) of the Code for banks, thrift institutions and other financial institutions.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Alaska and ordinances of the City and Borough, including the Bond Ordinance, and that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, been done and performed.

IN WITNESS WHEREOF, City and Borough of Juneau, Alaska has caused this Bond to be executed by the manual or facsimile signature of the City Manager or his/her designee and authenticated by the manual or facsimile signature of Clerk of the City and Borough as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY AND BOROUGH OF  
JUNEAU, ALASKA

By \_\_\_\_\_  
/s/ manual or facsimile  
City Manager or Designee

ATTEST:

\_\_\_\_\_  
/s/ manual or facsimile  
Clerk

The Certificate of Authentication for the Bonds shall be in substantially the following form:

**CERTIFICATE OF AUTHENTICATION**

Date of Authentication:

This bond is the Port Revenue Bond, 20\_\_ [A/B] [(AMT/Non-AMT)] of the City and Borough of Juneau, Alaska, dated \_\_\_\_\_, 20\_\_, and described in the within-mentioned Bond Ordinance.

CITY AND BOROUGH OF JUNEAU, ALASKA  
FINANCE DIRECTOR, as Bond Registrar

By \_\_\_\_\_  
Finance Director

**Section 18: Execution of Bonds.** The Bonds shall be executed on behalf of the City and Borough with the manual or facsimile signature of the City Manager or the Finance Director or his/her respective designee, shall be attested by the manual or facsimile signature of the City and Borough Clerk, and the seal of the City and Borough shall be impressed or a facsimile thereof imprinted or otherwise reproduced thereon.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Bond 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 Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

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In case either of the officers who shall have executed the Bonds shall cease to be officer or officers of the City and Borough before the Bonds so signed shall have been authenticated or delivered by the Bond Registrar, or issued by the City and Borough, such Bonds may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City and Borough as though those who signed the same had continued to be such officers of the City and Borough. The Bonds may also be signed and attested on behalf of the City and Borough by such persons who are at the actual date of delivery of such Bond the proper officers of the City and Borough although at the original date of such Bonds any such person shall not have been such officer of the City and Borough.

**Section 19. Supplements and Amendments.**

(a) *Without Consent of Owner.* The City and Borough 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 one or more or all of the following purposes:

(1) To add to the covenants and agreements of the City and Borough in this ordinance contained and other covenants and agreements thereafter to be observed, which shall not adversely affect the interests of the owners of the Bonds, or to surrender any rights or power herein reserved to or conferred upon the City and Borough.

(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 matters or questions arising under the ordinance as the Assembly may deem necessary or desirable and not inconsistent with the ordinance and which shall not adversely affect the interest of the owner of Parity Bonds.

Any such supplemental ordinance of the Assembly may be adopted without the consent of the owner of the Bonds at any time outstanding, notwithstanding any of the provisions of this section.

(b) *With Owner's Consent.* With the consent of the owners of Parity Bonds, the Assembly of the City and Borough 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 extend the fixed maturity of the Bonds, 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 thereof without the consent of the owner of each Parity Bond so affected.

It shall not be necessary for the consent of the owner under this subsection 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 Modification.* Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City and Borough under this ordinance shall thereafter be determined, exercised and enforced thereunder, subject in all respect to such modification and 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. A copy of each supplemental ordinance shall be provided to the owners of the Bonds.

**Section 20. Repeal and Rescission of Ordinance Serial No. 2012-28.** The City and Borough does hereby rescind the authority of the City and Borough to issue \$29,000,000 principal amount of port revenue bonds referred to in Ordinance Serial No. 2012-28. Such authorization has been given within this ordinance to allow for the issuance of \$29,000,000 in port revenue bonds in one or more series. Ordinance Serial No. 2012-28 is hereby rescinded and repealed in its entirety.

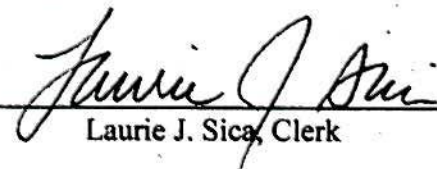
**Section 21. Severability.** If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City and Borough shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance.

**Section 22. Effective Date.** This ordinance shall be effective immediately upon its passage.

ADOPTED this 6th day of January, 2014.

  
Merrill Sanford, Mayor

ATTEST:

  
Laurie J. Sica, Clerk

CERTIFICATE

I, the undersigned, Clerk of the City and Borough of Juneau, Alaska (the "City and Borough"), DO HEREBY CERTIFY:

1. That the attached Ordinance Serial No. 2014-01 (herein called the "Ordinance") is a true and correct copy of an Ordinance of the City and Borough as finally adopted at a meeting of the Assembly held on the 6th day of January, 2014 and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the Assembly was present throughout the meeting and a legally sufficient number of members of the Assembly voted in the proper manner for the adoption of the Ordinance; that all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 6<sup>th</sup> day of January, 2014.

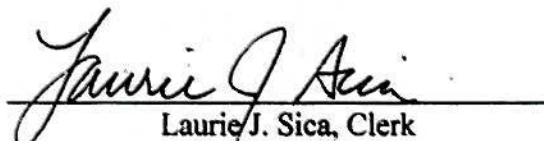
  
\_\_\_\_\_  
Laurie J. Sica, Clerk  
City and Borough of Juneau

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