

An Ordinance of the Haines Borough authorizing the issuance and sale to the Alaska Municipal Bond Bank of a sewer revenue refunding bond of the Borough in a principal amount not to exceed \$1,400,000 to refund an outstanding sewer revenue bond of the City of Haines; authorizing the date, form and terms of the refunding bond and a plan of refunding; and providing the terms under which the Borough may issue future sewer revenue bonds on a parity with the refunding bond.

WHEREAS, Haines Borough (the "Borough") owns and operates a sanitary sewage collection and treatment system (the "System"), previously owned and operated by the City of Haines (the "City"); and

WHEREAS, pursuant to Ordinance No. 598 of the City, passed by the City Council on December 1, 1993 (the "1993 Bond Ordinance"), the City issued its Sewer Revenue Bond, 1993, dated December 8, 1993, in the original principal amount of \$1,700,000 (the "1993 Bond"), to the United States of America, acting through the United States Department of Agriculture, Rural Development Administration ("USDA"), to secure a loan to the City by USDA to pay for improvements to the System, and the 1993 Bond is currently outstanding in the principal amount of approximately \$1,340,000; and

WHEREAS, as a result of the consolidation of the City and the former Haines Borough, as approved by the voters in October 2002, the Borough was incorporated on October 17, 2002, as a home rule borough and succeeded to all the assets and liabilities of the City and the former Haines Borough, including the 1993 Bond; and

WHEREAS, the 1993 Bond Ordinance provides that the Borough may prepay the 1993 Bond without penalty, and USDA has agreed to accept prepayment in full on any business day; and

WHEREAS, as a result of changed market conditions, it appears to the Assembly that debt service savings may be obtained by refinancing the 1993 Bond with a loan of funds from the Alaska Municipal Bond Bank (the "Bond Bank") to be derived from the Bond Bank's issuance of a series of its general obligation bonds (the "Bond Bank Bonds"); and

WHEREAS, if the Bond Bank approves the Borough's loan application, the Assembly wishes to delegate to the Chief Fiscal Officer and the Borough Manager the authority to approve a plan of refunding and to establish terms for sale of the refunding bond to the Bond Bank pursuant to a loan agreement, all as further described in this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH ASSEMBLY OF HAINES BOROUGH, as follows:

Section 1. Classification. This ordinance is not of a permanent and general nature and shall not be codified.

Section 2. Definitions. As used in this ordinance, the following words have the following meanings:

"Annual Debt Service" for any fiscal year or calendar year means the sum of:

- (a) the interest due in that year on all outstanding Parity Bonds excluding, however, interest to be paid from the proceeds of Parity Bonds,
- (b) the principal of all outstanding Serial Bonds due in that year, and

(c) the Sinking Fund Requirement, if any, for that year.

If the interest rate on any Parity Bonds is other than a fixed rate, the rate applicable at the time of the computation will be used.

For purposes of satisfying the rate covenant in Section 13(a) and the Future Parity Bonds test in Section 15(a), Annual Debt Service will be calculated net of any Debt Service Offsets.

"Assembly" means the Assembly of the Haines Borough, the general legislative authority of the Borough, as the same shall be duly constituted from time to time, or any successor body.

"Assessments" means assessments (including interest and penalties) levied in any local improvement district of the Borough formed to finance the construction of improvements to the System, if those assessments are pledged to be paid into the Bond Fund.

"Average Annual Debt Service" means the amount determined by dividing (a) the sum of all interest and principal to be paid on all Parity Bonds from the date of determination to the last maturity date of the Parity Bonds, by (b) the number of fiscal years or calendar years from and including the fiscal year or calendar year in which the determination is made to the last fiscal year or calendar year in which any of the Parity Bonds will be outstanding.

"Bond" means the Sewer Revenue Refunding Bond, 2012, of the Borough, in the principal amount of not to exceed \$1,400,000, authorized to be issued and sold to the Bond Bank pursuant to this ordinance.

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

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

"Bond Fund" means the Sewer Revenue Bond Redemption Fund, 2012, established pursuant to Section 9 of this ordinance.

"Bond Register" means the registration books for the Bond, maintained by the Registrar, for the purpose of complying with the requirements of Section 149 of the Code.

"Borough" means the Haines Borough, a home rule municipal corporation duly organized and existing under the Constitution and laws of the State of Alaska and its Charter.

"Chief Fiscal Officer" means the Chief Fiscal Officer of the Borough or the successor to the duties of that office.

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

"Costs of Maintenance and Operation" means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses of the System, but excludes depreciation, payments for debt service or

into reserve accounts and costs of capital additions to or replacements of the System, taxation by the Borough or payments in lieu of taxes.

"Debt Service Offset" means funds received by the Borough, including but not limited to federal interest subsidy payments, designated as such by the Borough and not included in Gross Revenue and that are legally available to pay debt service on Parity Bonds.

"Federal Tax Certificate" means the certificate of that name regarding federal tax matters relating to the Bond that the Borough will provide when the Bond is issued.

"Future Parity Bonds" mean any revenue bonds, revenue warrants or other revenue obligations issued in the future with a lien on money in the Revenue Fund to pay and secure the payment of the principal thereof and interest thereon equal to the lien created on the money in the Revenue Fund to pay and secure payment of the principal of and interest on the Bond.

"Government Obligations" means any bonds or other obligations that, as to the full and timely payment of principal and interest, constitute direct obligations of, or are unconditionally guaranteed by, the United States of America.

"Gross Revenue" means all earnings, revenue and money, except Assessments, received by the Borough from or on account of the operation of the System, including proceeds from the sale, lease or other disposition of any of the properties or facilities of the System, and the income from investments of money in the Revenue Fund and any bond fund or from any other investment thereof except the income from investments irrevocably pledged to the payment of revenue bonds pursuant to a plan of retirement or refunding. Gross Revenue shall not include grants or bond proceeds, but shall include federal or state reimbursements of operating expenses to the extent that those expenses are included as Costs of Maintenance and Operation. Gross Revenue shall include any federal interest subsidy payments received in connection with Parity Bonds (to the extent those payments are not designated as Debt Service Offsets).

"Loan Agreement" means the Loan Agreement by and between the Borough and the Bond Bank authorized to be entered into pursuant to Section 16 of this ordinance.

"Net Revenue" means Gross Revenue less Costs of Maintenance and Operation.

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

"Professional Utility Consultant" means an independent person or firm selected by the Borough having a favorable reputation for skill and experience with sewer systems of comparable size and character to the System in the area that is relevant to the purpose for which the consultant is retained.

"Registrar" means the Chief Fiscal Officer, for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond.

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

"Reserve Account Requirement" means, with respect to the Bond or Future Parity Bonds, an amount equal to the least of (a) 125% of Average Annual Debt Service on the bonds, (b) 10% of the net proceeds of the bonds, or (c) maximum Annual Debt Service on the bonds.

"Revenue Fund" means the special fund of the Borough known as the "Sewer Enterprise Fund" that has heretofore been created in the office of the Chief Fiscal Officer, as described in Section 9 of this ordinance.

"Rule" means Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

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

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

"System" means the sanitary sewer system of the Borough and all additions thereto and betterments and extension thereof at any time made, all of which is a public enterprise of the Borough.

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

"1993 Bond Ordinance" means Ordinance No. 598 of the City, passed by the City Council on December 1, 1993.

"1993 Bond" means the City's Sewer Revenue Bond, 1993, issued under date of December 8, 1993, pursuant to the 1993 Bond Ordinance, currently an obligation of the Borough and currently outstanding in the aggregate principal amount of approximately \$1,340,000.

Section 3. Authorization of Refunding Bond. The Borough is hereby authorized to issue and sell to the Alaska Municipal Bond Bank a sewer revenue refunding bond of the Borough in a principal amount not to exceed \$1,400,000 (the "Bond") to provide funds to refund the 1993 Bond, in accordance with the refunding plan to be determined pursuant to Section 11 of this ordinance, and to pay costs of issuance of the Bond.

The Bond shall be designated as the "Haines Borough Sewer Revenue Refunding Bond, 2012," shall be dated as of the date to be established in accordance with Section 16 of this ordinance, shall be fully registered as to both principal and interest, shall be numbered in such manner and with any additional designation as the Registrar deems necessary for purposes of identification and control, shall bear interest at the rate or rates, shall mature on the date and shall be paid in installments in the principal amounts and on the dates to be determined in accordance with Section 16 of this ordinance. Interest on the Bond shall be calculated based on a 360-day year of twelve 30-day months.

Section 4. Payment, Registration and Transfer. The Chief Fiscal Officer will act as authenticating agent, paying agent and registrar for the Bond (collectively, the "Registrar"). Both principal of and interest on the Bond are payable in lawful money of the United States of America. Installments of principal of and interest on the Bond will be paid by check or draft of the Registrar mailed (on the date such interest is due) to the Registered Owner at the address appearing on the Bond Register on the fifteenth day of the month preceding each interest payment date. The final installment of principal of the Bond will be payable upon presentation

and surrender of the Bond to the Registrar by the Registered Owner at the office of the Registrar in Haines, Alaska. Notwithstanding the foregoing, so long as the Bond Bank is the Registered Owner of the Bond, payments of principal of and interest on the Bond will be made to the Bond Bank in accordance with the Loan Agreement.

The Bond may be transferred only on the Bond Register maintained by the Registrar for that purpose upon the surrender thereof by the Registered Owner or his or her duly authorized agent and only if endorsed in the manner provided thereon, and thereupon a new fully registered Bond of like principal amount, maturity and interest rate will be issued to the transferee in exchange therefor. Upon surrender thereof to the Registrar, the Bond is interchangeable for a bond or bonds (in denominations of \$5,000 or any integral multiple thereof) of an equal aggregate principal amount and of the same interest rates and principal payment amounts as the Bond. Such transfer or exchange shall be without cost to the Registered Owner or transferee.

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

Section 5. Prepayment. Provisions for the optional prepayment of some or all principal installments of the Bond may be established pursuant to Section 16 and set forth in the Loan Agreement. Portions of the principal amount of the Bond, in increments of \$5,000 or any integral multiple of \$5,000, may be prepaid.

So long as the Bond Bank is the owner of the Bond, notice of prepayment will be given according to the terms of the Loan Agreement. If the Bond Bank is not the owner of the Bond, notice of prepayment must be given not less than 30 nor more than 60 days prior to the date fixed for prepayment by first class mail, postage prepaid, to the Registered Owner of the Bond at the address appearing on the Bond Register. The requirements of this section will be deemed complied with when notice is mailed as herein provided, regardless of whether it is actually received by the owner of the Bond. Each official notice of prepayment must be dated and 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, will 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 6. Form of Bond. The Bond will be in substantially the following form:

UNITED STATES OF AMERICA

NO. _____

\$ _____

STATE OF ALASKA

HAINES BOROUGH

SEWER REVENUE REFUNDING BOND, 2012

FINAL MATURITY DATE:

INTEREST RATES: See Below

REGISTERED OWNER: ALASKA MUNICIPAL BOND BANK

PRINCIPAL AMOUNT: _____

Haines Borough, a home rule municipal corporation organized and existing under and by virtue of the laws and Constitution of the State of Alaska and its Charter (the "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), together with interest on those installments from the date hereof or the most recent date to which interest has been paid or duly provided for, at the interest rates set forth below, on _____, 20____, and on each _____ 1 and _____ 1 thereafter:

Year of Principal Installment Payment (_____ 1)	Principal Installment Amount	Interest Rate
2013	\$	
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		
2033		

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 Chief Fiscal Officer of the Borough (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 will be paid to the Registered Owner hereof upon presentation and surrender of this bond at the office of the Registrar in Haines, Alaska. Notwithstanding the foregoing, so long as the Bond Bank is the Registered Owner of this bond, payments of principal of and interest on this bond will be made to the Bond Bank in accordance with the Loan Agreement.

This bond is a sewer revenue bond of the Borough, issued pursuant to Ordinance No. _____ passed by the Borough Assembly on _____, 2012 (the "Bond Ordinance"), to refund an outstanding sewer revenue bond of the City of Haines, predecessor in interest to the Borough. Capitalized terms used in this bond and not otherwise defined herein have the meanings given those terms in the Bond Ordinance.

This bond is subject to prepayment of principal as described in the Loan Agreement.

The Bond is a limited obligation of the Borough, payable solely from the Bond Fund, and is not an obligation of the State of Alaska or any political subdivision thereof other than the Borough. The Bond is not a general obligation, and neither the full faith and credit nor the taxing power of the Borough or the State of Alaska or any political subdivision thereof is pledged to the payment of the Bond.

The Borough has pledged and bound itself to set aside from Gross Revenue and to pay into the Bond Fund and the accounts created therein the various amounts required by the Bond Ordinance to be paid into and maintained in those fund and accounts, all within the times provided by the Bond Ordinance. To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from Gross Revenue into the Bond Fund and accounts 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 revenue bonds of the Borough hereafter issued on a parity with the Bond, and superior to all other liens and charges of any kind or nature, except the Costs of Maintenance and Operation of the System.

The Borough has further bound itself to maintain the System in good repair, working order and condition, to operate the same in an efficient manner and at a reasonable cost, and to establish, maintain and collect rates and charges in each calendar year that will make available, for the payment of the principal of and interest on Parity Bonds outstanding as the same shall become due, Gross Revenue in an amount equal to at least 1.25 times Annual Debt Service for such year (as described in the Bond Ordinance).

Upon surrender to the Registrar, this bond is interchangeable for a bond or bonds (in denominations of \$5,000 or any integral multiple thereof) of an equal aggregate principal amount and of the same interest rates and principal payment amounts as the Bond. The exchange or transfer shall be without cost to the Registered Owner or transferee. The Borough may deem the person in whose name this bond is registered to be the absolute owner hereof for the purpose of receiving payment of the principal of and interest on this bond and for any and all other purposes whatsoever.

This bond will 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 has been manually signed by the Registrar.

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 the Charter, ordinances and resolutions of the Borough, 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, and that this bond does not exceed any Constitutional or statutory limitations.

IN WITNESS WHEREOF, Haines Borough has caused this bond to be signed on behalf of the Borough with the manual or facsimile signature of the Borough Manager, to be attested by the manual or facsimile signature of the Borough Clerk, and the seal of the Borough to be imprinted or impressed hereon, as of this _____, 2012.

HAINES BOROUGH

By _____ /s/ _____
Borough Manager

[SEAL]

ATTEST:

_____/s/ _____
Borough Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____, 2012

This is the Haines Borough Sewer Revenue Refunding Bond, 2012, dated _____, 2012, as described in the Bond Ordinance.

By _____ /s/ _____
Chief Fiscal Officer,
Haines Borough,
as Registrar

(form of assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby 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: _____, _____.

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.

SIGNATURE GUARANTEED:

Section 7. Execution of the Bond. The Bond will be executed on behalf of the Borough with the manual or facsimile signature of the Borough Manager, attested by the manual or facsimile signature of the Borough Clerk, and the seal of the Borough will be impressed or a facsimile thereof imprinted thereon. Only a Bond that bears a Certificate of Authentication in the form set forth in Section 6, manually executed by the Registrar, will be valid or obligatory for any purpose or entitled to the benefits of this ordinance. The executed Certificate of Authentication is conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

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

Section 8. Revenue Fund. A special fund of the Borough known as the "Sewer Enterprise Fund" ("Revenue Fund") has heretofore been created in the office of the Chief Fiscal Officer. The Borough hereby obligates and binds itself to pay all Gross Revenue as collected into the Revenue Fund. The money in the Revenue Fund must be held separate and apart from

all other funds and accounts of the Borough. The Gross Revenue deposited in the Revenue Fund must be used only for the following purposes and in the following order of priority:

FIRST, to pay the Costs of Maintenance and Operation and to maintain a balance in the Revenue Fund sufficient to enable the Borough to continuously meet Costs of Maintenance and Operation on a current basis;

SECOND, to make all payments required to be made into the Bond Fund to pay the interest on any Parity Bonds;

THIRD, to make all payments required to be made into the Bond Fund 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 to secure the payment of the principal of and interest on any Parity Bonds;

FIFTH, to make all payments required to be made into any revenue bond redemption fund, revenue warrant redemption fund, debt service account, reserve account or bond retirement account created to pay and secure the payment of the principal of and interest on any revenue bonds, or revenue warrants or other revenue obligations of the Borough having a lien upon Gross 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 sewer revenue bonds, sewer revenue warrants or other sewer revenue obligations of the Borough, to make additions, betterments, improvements and repairs to or extensions and replacements of the System, or for any other lawful Borough purposes.

Section 9. Bond Fund. There is hereby authorized to be created in the office of the Chief Fiscal Officer a fund of the Borough to be known as the "Sewer Revenue Bond Redemption Fund, 2012" (the "Bond Fund"), which fund (and the accounts therein) shall be continued and drawn upon for the sole purpose of paying the principal of, premium if any, and interest on the Parity Bonds. The money in the Bond Fund shall be kept separate and apart from all other funds and accounts of the Borough.

(a) *Debt Service Account.* A special account known as the Debt Service Account is authorized to be created in the Bond Fund for the purpose of paying the principal of, premium, if any, and interest on the Parity Bonds.

As long as the Bond remains outstanding, the Borough hereby irrevocably obligates and binds itself to set aside and pay from the Revenue Fund into the Debt Service Account, on or before the date due, those amounts necessary, together with Gross Revenue collected and deposited and such other money as is on hand and available therefor in the Debt Service Account, to pay the interest or principal and interest next coming due on the outstanding Bond.

The Borough covenants and agrees that if it issues any Future Parity Bonds that are Term Bonds, it will provide in each ordinance or resolution authorizing the issuance of the same for annual payments to be made from the Revenue Fund into the Debt Service Account sufficient together with Gross Revenue collected and deposited and such other money as is on hand and available therefor in such account to amortize the principal of Future Parity Bonds that are Term Bonds on or before the maturity date thereof.

(b) *Reserve Account.* A Reserve Account is authorized to be created in the Bond Fund for the purpose of securing the payment of the principal of and interest on the Parity

Bonds. The Borough hereby covenants and agrees that on the date of issuance of the Bond it will deposit into the Reserve Account from proceeds of the Bond, from the Reserve Account for the 1993 Bond, or other available funds of the Borough, a sum equal to the Reserve Account Requirement for the Bond.

The Borough further covenants and agrees that if it issues any Future Parity Bonds it will provide in each ordinance or resolution authorizing their issuance that, on or before the dates of issuance of the Future Parity Bonds, the Borough will set aside and pay into the Reserve Account out of the proceeds of the Future Parity Bonds or out of any other funds on hand and legally available for that purpose, an amount that, together with other money already in the Reserve Account and otherwise required to be paid therein, will at least equal the Reserve Account Requirement.

The Borough further covenants and agrees that after the required deposit has been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Reserve Account Requirement, as redetermined in each calendar year with respect to the Parity Bonds secured by the Reserve Account. 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 outstanding Parity Bonds, 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. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to the date of redemption, on outstanding Parity Bonds secured by the Reserve Account, as long as the money remaining on deposit in the Reserve Account is at least equal to the Reserve Account Requirement determined with respect to the Parity Bonds remaining outstanding.

If the Bond is ever refunded, the money set aside in the Reserve Account to secure the payment thereof may be used to retire the Bond or may be transferred to any other reserve account that may be created to secure the payment of any bonds issued to refund the Bond.

If there occurs a deficiency in the Debt Service Account to meet maturing installments of either interest on or principal of and interest on the outstanding Parity Bonds payable out of the Debt Service Account, the deficiency shall be made up from the Reserve Account by the withdrawal of money therefrom and by the sale or redemption of obligations held in the Reserve Account, if necessary, in amounts that 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 must then be made up from money in the Revenue Fund first available after making the payments required to be made under paragraphs "FIRST" through "THIRD" of Section 8 of this ordinance.

(c) *Lien of Bond Fund.* The Bond, together with the interest thereon, shall be payable from Gross Revenue, and the Gross Revenue is hereby pledged and set aside out of the Revenue Fund into the Bond Fund. The amounts so pledged are hereby declared to be a lien and charge upon Gross Revenue and the money in the Revenue Fund equal to the lien and charge thereon to secure and pay the principal of and interest on and any Future Parity Bonds and superior to all other charges of any kind or nature, except the Costs of Maintenance and Operation.

(d) *Investment of Money in Bond Fund.* All money in the Debt Service Account or Reserve Account may be kept in cash or invested in investments permitted for Borough funds. Interest earned on or profits made from the sale of the investments shall be deposited in and become a part of the Revenue Fund.

Section 10. Adequacy of Revenues. The Assembly hereby declares that in fixing the amounts to be paid into the Bond Fund as provided in this ordinance it has exercised due regard for the Costs of Maintenance and Operation and has not obligated the Borough to set aside and pay into the Bond Fund a greater amount of money in the Revenue Fund than in its judgment will be available over and above the Costs of Maintenance and Operation.

Section 11. Refunding Plan; Application of Bond Proceeds. The Chief Fiscal Officer is hereby authorized, in consultation with the Borough Manager, to refund the 1993 Bond to achieve reasonable savings compared to the debt service that would otherwise be payable on the 1993 Bond, calculated on a present value basis.

The proceeds of sale of the Bond, together with other funds of the Borough, if necessary, will be used immediately upon receipt thereof to pay to USDA an amount sufficient to redeem in full the 1993 Bond and to pay costs of issuance and refunding. If requested by USDA, the Bond Bank, or otherwise desirable for the Borough, additional or alternative arrangements for prepayment of the 1993 Bond, including but not limited to establishment of a refunding escrow, may be approved by the Borough Manager.

Section 12. Defeasance. If 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 retire the Bond or a portion thereof in accordance with its terms, are set aside in a special account to effect such retirement, and such money and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on the Bond or portion thereof so provided for, and such Bond or portion thereof will 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 will be deemed not to be outstanding hereunder.

Section 13. Covenants and Agreements. The Borough hereby covenants with the Registered Owner of the Bond for as long as it remains outstanding as follows:

(a) *Rates and Charges.* The Borough covenants that it will establish, maintain and collect lawful rates and charges for the use of the services and facilities of the System, and shall adjust those rates and charges from time to time so that:

(1) Gross Revenue will at all times be sufficient (a) to pay all Costs of Maintenance and Operations and to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts that the Borough may now be and hereafter become obligated to pay from Gross Revenue by law or contract; and (b) together with Assessments actually collected to pay the principal of and interest on all outstanding Parity Bonds as and when the same become due and payable, to make all payments required to be made into the Bond Fund to satisfy the Sinking Fund Requirement, and to make when due all payments required to be made into the Reserve Account; and

(2) Net Revenue of the System annually will equal at least 1.25 times Annual Debt Service on the Bond and any Future Parity Bonds, after deducting from "Annual Debt Service" an amount equal to the Assessments actually collected for such year.

(b) *Maintenance of System.* The Borough covenants that it will at all times keep and maintain the System in good repair, working order and condition, and will at all times operate

the same and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) *Sale or Disposition of the System.* The Borough will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment into the Bond Fund of cash or Government Obligations, if any, sufficient together with interest to be earned thereon to pay the principal of and interest on the then outstanding Parity Bonds, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Bond Fund of the greater of:

(1) An amount that will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and accounts therein) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue for that period; or

(2) An amount that will be in the same proportion to the net principal amount of Parity Bonds then outstanding that the book value of the part of the System sold or disposed of bears to the book value of the entire System immediately prior to the sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties of the System (to the extent required above) shall be paid into the Bond Fund.

Notwithstanding any other provision of this subsection, the Borough may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same with a value less than 4% of the net utility plant of the System or which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

(d) *Collection of Assessments.* The Borough shall promptly collect all Assessments levied in any local improvement district now or hereafter created to secure the payment of the principal of and interest on the Parity Bonds and shall pay the same into the Bond Fund without allocation of the Assessments to any particular series of Parity Bonds. It is hereby provided further, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the Borough from issuing revenue bonds having a lien on Gross Revenue junior to the lien on such revenue for the payment of the principal of and interest on Parity Bonds and pledging as security for the payments of such junior lien bonds assessments levied in any local improvement district that may have been created to pay part or all the cost of improvements to the System for which such junior lien revenue bonds were specifically issued.

(e) *Books and Accounts.* The Borough covenants that it will maintain complete books and records relating to the operation of the System and its financial affairs, and will cause those books and records to be audited in accordance with Alaska law, and cause to be prepared an annual financial and operating statement.

(f) *Insurance.* The Borough covenants that it will carry the types of insurance (if available at a reasonable cost) on the properties of the System in the amounts normally carried by public sewer utilities engaged in the operation of sewerage systems, and the cost of the insurance will be considered a part of Costs of Maintenance and Operation. The Borough may participate in insurance pools in lieu of carrying all such insurance by itself or may institute or continue a self-insurance program with respect to any or all of the aforementioned risks.

(g) *Delinquencies.* The Borough covenants that it will promptly collect all service charges and Assessments, determine in a timely manner all delinquencies, and take all necessary legal action to enforce collection of delinquencies.

(h) *No Free Service.* Except as permitted by law, the Borough will not furnish any service of the System to any customer whatsoever free of charge.

Section 14. Tax Exemption.

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

(b) *Federal Tax Certificate.* Upon the issuance of the Bond, the Chief Fiscal Officer is authorized to execute the Federal Tax Certificate, which will certify to various facts and representations concerning the Bond, based on the facts and estimates known or reasonably expected on the date of issuance of the Bond, and make certain covenants with respect to the Bond, including but not limited to the following:

(i) *No Private Activity Bond.* The proceeds of the Bond will not be used in a manner that would cause the Bonds to be "private activity bonds" within the meaning of the Code, as further described in the Federal Tax Certificate. Moreover, the Borough covenants that it will use the proceeds of the Bond (including interest or other investment income derived from Bond proceeds), regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the Bond will not be a "private activity bond."

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

(iii) *No Arbitrage Bond.* The Borough reasonably expects that the proceeds of the Bond will not be used in a manner that would cause the Bond to be a "arbitrage bond" within the meaning of the Code, as further described in the Federal Tax Certificate.

The Borough has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Borough is a bond issuer whose arbitrage certifications may not be relied upon.

(iv) *No Hedge Bond.* The Borough reasonably expects that at least 85% percent of the proceeds of the Bond will be spent within three years of the date the Bond is issued to carry out the governmental purposes of the Bond.

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

(c) *Arbitrage Rebate.* If the Borough does not qualify for an exception to the requirements of Section 148(f) of the Code relating to the payment of arbitrage rebate to the

United States, the Borough will take all necessary steps to comply with the requirement that certain amounts earned by the Borough on the investment of the "gross proceeds" of the Bond (within the meaning of the Code) be rebated to the United States.

Section 15. Issuance of Future Parity Bonds. The Borough hereby further covenants and agrees with the Registered Owner of the Bond for as long as the Bond remains outstanding as follows:

(a) That it will not issue any bonds or other obligations with a lien on Gross Revenue superior to the lien thereon of the Bond. The Borough may issue Future Parity Bonds for:

First, the purpose of acquiring, constructing and installing additions and improvements to and extensions of, acquiring necessary equipment for, or making necessary replacements or repairs and capital improvements to the System; or

Second, the purpose of refunding or purchasing and retiring at or prior to their maturity any outstanding revenue bonds or other obligations payable out of Gross Revenue;

and to pledge that payments be made into the Bond Fund for the payment of the principal thereof and interest thereon out of the Revenue Fund sufficient to pay the principal of and interest on those Future Parity Bonds and to maintain the reserves required therefor, which payments may rank equally with the payments out of the Revenue Fund into the Bond Fund and the Reserve Account to pay and secure the payment of the principal of and interest on any Parity Bonds then outstanding, upon compliance with the following conditions:

(1) That at the time of the issuance of such Future Parity Bonds there is no deficiency in the Bond Fund and the Reserve Account.

(2) If there are special assessments levied in any local improvement district in which additions and improvements to and extensions of the System will be constructed from the proceeds of such Future Parity Bonds, the ordinance or resolution authorizing such Future Parity Bonds shall require that such special assessments be paid into the Bond Fund, except for prepaid assessments, which may be paid into a construction fund or account to pay costs of improvements to the System.

(3) If there are special assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Future Parity Bonds, the ordinance or resolution authorizing such Future Parity Bonds shall require such special assessments to be used for the refunding or paid into the Bond Fund.

(4) The principal of and interest on the Future Parity Bonds shall be payable out of the Bond Fund, and the ordinance or resolution authorizing their issuance shall further provide for payments into the Bond Fund to satisfy the Sinking Fund Requirement and payments into the Reserve Account to satisfy the Reserve Account Requirement, all as required by Section 9 of this ordinance. The ordinance or resolution providing for the issuance of such Future Parity Bonds shall provide for the payment of the required Reserve Amount for those Future Parity Bonds into the Reserve Account in the Bond Fund within not more than ten years from the date of issue of such Future Parity Bonds out of the Gross Revenue of the System in approximately equal semi-annual payments.

(5) Prior to the delivery of any Future Parity Bonds, the Borough shall have on file in the office of the Borough Clerk either:

(A) a certificate of the Chief Fiscal Officer showing that the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Future Parity Bonds (without any of the adjustments described in subsection (5)(B) below) will equal at least 1.25 times the Annual Debt Service for all Parity Bonds plus the Future Parity Bonds proposed to be issued (after deducting from "Annual Debt Service" the amount of Assessments, allocated to the years in which they would be received if the unpaid balance of each assessment roll were paid in the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance or resolution confirming the assessment roll) for each calendar or fiscal year after the issuance of the Proposed Future Parity Bond. "Annual Debt Service" for purposes of this test may be adjusted to reflect any Debt Service Offset; or

(B) a certificate of a Professional Utility Consultant showing that the Net Revenue determined and adjusted as hereafter provided for each calendar or fiscal year after the issuance of such Future Parity Bonds (the "Adjusted Net Revenue") will equal at least 1.25 times the Annual Debt Service (after deducting Assessments, allocated to the years in which they would be received if the unpaid balance of each assessment roll were paid in the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance or resolution confirming the assessment roll) for each such calendar or fiscal year for all Parity Bonds plus the Future Parity Bonds proposed to be issued.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Future Parity Bonds as adjusted by such Professional Utility Consultant to take into consideration changes in Net Revenue estimated to occur under any or all of the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, will be outstanding:

(i) the additional Net Revenue that would have been received if any change in rates and charges adopted by ordinance or resolution of the Borough prior to the date of such certificate and subsequent to the beginning of such 12-month period, had been in force during the full 12-month period;

(ii) the additional Net Revenue that would have been received if any facility of the System that became fully operational after the beginning of such 12-month period had been so operating for the entire period;

(iii) the additional Net Revenue estimated by such Professional Utility Consultant to be received from potential customers of the System with existing homes or other buildings that will be required to connect to any additions, betterments and improvements to and extensions of any facilities of the System that are (a) under construction at the time of such certificate or (b) will be constructed from the proceeds of the Future Parity Bonds to be issued;

(iv) the additional Net Revenue that would have been received if those customers added to the System subsequent to the beginning of such 12-month period had been customers for the entire period;

(v) the additional Net Revenue estimated to be received from any potential customers of the System who paid any required connection charge subsequent to the beginning of such 12-month period;

(vi) the additional Net Revenue estimated to be received from any potential customers of the System who received building permits subsequent to the beginning of such 12-month period and are anticipated to connect to the System;

(vii) The additional Net Revenue estimated to be received from any person, firm, association, private or municipal corporation under any executed service contract, which net revenue is not included in any of the sources of Net Revenue heretofore described in this subsection A(5); and

(viii) The estimated change in Net Revenue as a result of any actual or reasonably anticipated changes in the Costs of Maintenance and Operation after such 12-month period.

The Professional Utility Consultant may rely upon, and his or her certificate shall have attached thereto, financial statements of the System certified by the Chief Fiscal Officer showing income and expenses for the period upon which the same is based.

The certificate of the Chief Fiscal Officer or Professional Utility Consultant will be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection (5).

(b) Notwithstanding the foregoing requirement, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the then outstanding Parity Bonds and the issuance of such refunding Future Parity Bonds will result in a debt service savings and does not require an increase of more than \$5,000 in any fiscal or calendar year for principal of and interest on such refunding Future Parity Bonds over and above the amount required in such year for the principal of and interest on the bonds being refunded thereby, the condition stated in subsection A(5) of this section need not be met.

(c) Nothing herein contained shall prevent the Borough from issuing any revenue bonds, warrants or other obligations that are a charge upon the money in the Revenue Fund junior or inferior to the payments required by this ordinance to be made into the Bond Fund and the Reserve Account.

Section 16. Sale of Bond to Bond Bank. The Chief Fiscal Officer is authorized to negotiate the sale of the Bond to the Bond Bank on terms and conditions consistent with this ordinance to be set forth in a Loan Agreement by and between the Borough and the Bond Bank substantially in the form set forth on Exhibit A attached hereto and including the principal amount, date, principal installment payment schedule, interest rates, and other terms, all as provided for in this ordinance, subject to the approval of the Borough Manager, which approval shall be evidenced by the Borough Manager's execution of the Loan Agreement.

Following the sale of the Bond, the Chief Fiscal Officer will provide a report to the Assembly, describing the final terms of the Bond approved pursuant to the authority delegated in this section. The report will be provided to the Assembly at the next regularly scheduled meeting.

Section 17. General Authorization; Prior Acts. The Mayor, Borough Manager, Chief Fiscal Officer, Borough Clerk, Borough Attorney and any other appropriate officers of the Borough are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 18. Lost or Destroyed Bond. If the Bond is lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of like amount, maturity and tenor to the Registered Owner upon the owner's paying the expenses and charges of the Borough in connection with preparation and authentication of the replacement Bond and upon his or her filing with the Registrar evidence satisfactory to him or her that such Bond was actually lost, stolen or destroyed and of his or her ownership, and upon furnishing the Borough with indemnity satisfactory to the Registrar.

Section 19. Ongoing Disclosure. The Borough acknowledges that, under Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), the Borough may in the future be an "obligated person" with respect to the Bond Bank Bonds. In accordance with the Rule and as the Bond Bank may require, the Borough shall undertake to provide certain annual financial information and operating data as shall be set forth in the Loan Agreement.

Section 20. Supplements and Amendments.

(a) The Assembly from time to time and at any time may adopt an ordinance(s) or resolution(s) supplemental hereof, which ordinance(s) or resolution(s) thereafter shall become a part of this ordinance, for any one or more or all of the following purposes:

(1) To add to the covenants and agreements of the Borough in this ordinance other covenants and agreements thereafter to be observed, which shall not adversely affect the interests of the owners of the Bond or any Parity Bonds in any material respect, or to surrender any right or power herein reserved to or conferred upon the 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 such matters or questions as the Assembly may deem necessary or desirable and not inconsistent with this ordinance and which shall not adversely affect the interests of the owners of the Bond or any Parity Bonds in any material respect.

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

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

(b) With the consent of the owners of not less than 65% in aggregate principal amount of the Parity Bonds at the time outstanding, the Assembly may adopt an ordinance(s) or resolution(s) 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 or resolution; provided, however, that no such supplemental ordinance or resolution shall:

(1) Extend the fixed maturity of any Parity 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 bond so affected; or


(2) Reduce the aforesaid percentage of bondowners required to approve any such supplemental ordinance or resolution, without the consent of the owners of all Parity Bonds then outstanding.

accordance therewith, and the respective rights, duties and obligations of the Borough under this ordinance and the owner of the Bond will thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all the terms and conditions of any such supplemental ordinance or resolution shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.

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 Borough are declared by any court of competent jurisdiction to be contrary to law, then that covenant or covenants, agreement or agreements, shall be null and void and will be deemed separable from the remaining covenants and agreements of this ordinance and will in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 22. Effective Date. This ordinance will become effective from and after the date of its passage, as provided in Section 2.12.030(B) of the Haines Borough Code of Ordinances.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE BOROUGH ASSEMBLY OF HAINES, ALASKA, THIS 14th DAY OF AUGUST, 2012.

By: 
Stephanie Scott, Mayor

ATTEST:


Julie Cozzi, MMC, Borough Clerk

Introduction: 07/10/12
First Public Hearing: 07/24/12
Second Public Hearing: 08/14/12 - Adopted