

Ordinance 13-15 Authorizing Harbor Revenue Bonds to be Issued in Series to Finance Harbor Improvements

Ordinance ID: 13-15

Ordinance Status: Adopted

Ordinance Summary:

An Ordinance of the City of Homer, Alaska, Authorizing Harbor Revenue Bonds of the City to be Issued in Series to Finance Harbor Improvements; Creating a Lien Upon Net Revenue of the Harbor for the Payment of the Bonds; and Establishing Covenants of the City Related to the Bonds. City Manager.

CITY OF HOMER
HOMER, ALASKA
City Manager
ORDINANCE 13-15

AN ORDINANCE OF THE CITY OF HOMER, ALASKA, AUTHORIZING HARBOR REVENUE BONDS OF THE CITY TO BE ISSUED IN SERIES TO FINANCE HARBOR IMPROVEMENTS; CREATING A LIEN UPON NET REVENUE OF THE HARBOR FOR THE PAYMENT OF THE BONDS; AND ESTABLISHING COVENANTS OF THE CITY RELATED TO THE BONDS.

WHEREAS, the City of Homer, a first class city organized under the Constitution and laws of the State of Alaska (the "City") owns and operates a harbor (as further defined in Section 1, the "Harbor") as a revenue-producing enterprise; and

WHEREAS, AS 29.47.250 provides that an election is not required to authorize the City to issue revenue bonds; and

WHEREAS, it is necessary and in the best interest of the City and its residents that the City now provide for the issuance of one or more series of revenue bonds to finance improvements to the Harbor and for any other purpose of the Harbor now or hereafter permitted by law.

THE CITY OF HOMER HEREBY ORDAINS:

Section 1. Definitions. The following terms shall have the following meanings in this Master Ordinance:

"Aggregate Annual Debt Service" means Annual Debt Service for all Outstanding Bonds.

"Annual Debt Service" means the total amount of Debt Service for any Bond or series of Bonds in any Fiscal Year or Base Period.

"Base Period" means any consecutive 12-month period selected by the City out of the 30-month period next preceding the date of issuance of an additional series of Bonds.

"Bond Bank" means the Alaska Municipal Bond Bank, a public corporation of the State of Alaska.

"Bond Register" means the registration books maintained by the Registrar as Bond registrar, which include the names and addresses of the owners or nominees of the owners of the Bonds.

"Bonds" means the bonds, notes or other evidences of indebtedness issued from time to time in series under authority of Section 4.

"City" means the City of Homer, Alaska, a first class city organized and existing under the Constitution and laws of the State of Alaska.

"City Representative" means the City Manager or the City Finance Director, or such other person as may be

designated from time to time by resolution of the Council.

"Consultant" means an independent professional engineer or engineering firm experienced in harbor matters appointed by the City to perform the duties of Consultant under this Master Ordinance. For the purposes of delivering any certificate required by Section 5 and making the calculation required by Section 5(b)(2), the term Consultant also shall include any independent public accounting firm appointed by the City to make such calculation or to provide such certificate.

"Costs of Construction" means all costs paid or incurred by the City in connection with the acquisition and construction of capital additions, improvements and betterments to and extensions of the Facilities, and the placing of the same in operation, including without limitation paying all or a portion of the interest on the series of Bonds or any portion thereof issued to finance the costs of such improvements during the period of construction of such improvements and for a period of time thereafter; paying amounts required to meet any reserve requirement for the fund or account established or maintained for such series of Bonds; paying or reimbursing the City or any fund thereof or any other person for expenses incident and properly allocable to the acquisition and construction of said improvements and the placing of the same in operation; and all other items of expense incident and properly allocable to the acquisition and construction of said additions and improvements, the financing of the same and the placing of the same in operation.

"Council" means the general legislative authority of the City, as the same may be constituted from time to time.

"Coverage Requirement" means Net Revenue equal to or greater than 120% of Aggregate Annual Debt Service.

"Debt Service" means, for any period, with respect to any Bonds, an amount equal to (1) the principal amount of such Bonds due or subject to mandatory redemption during such period and for which no sinking fund installments have been established, (2) the amount of any payment required to be made during such period into any sinking fund established for the payment of any such Bonds, plus (3) all interest payable during such period on any such Bonds Outstanding and with respect to 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 Bonds on the date specified in the Series Ordinance authorizing such Bonds.

"Facilities" means all equipment and all property, real and personal, or any interest therein, whether improved or unimproved, now or hereafter (for as long as any Bonds shall be Outstanding) owned, operated, used, leased or managed by the Harbor and which contribute in some measure to its Gross Revenue.

"Fiscal Year" means the fiscal year of the City, which currently is the 12-month period commencing on January 1 and ending the following December 31.

"Gross Revenue" means all income, receipts and revenue derived by or for the account of the Harbor from time to time from any source from the ownership, leasing or operation of the Facilities whatsoever, and all earnings on any fund or account that is pledged to secure the Bonds. However, the following shall be excluded from Gross Revenue: (i) the proceeds of any borrowing by the City and the earnings thereon (other than earnings on proceeds deposited in reserve funds); (ii) proceeds of insurance or condemnation proceeds other than business interruption insurance; (iii) proceeds of state or federal grants; and (iv) income from investments irrevocably pledged to the payment of Bonds issued or to be defeased under any refunding bond plan of the Harbor.

"Harbor" means all publicly owned docks, floats, berths, tidal grids and other mooring facilities operated by the City, including without limitation the Deep Water Dock, Pioneer (Ferry) Dock, Fish Dock within the Small Boat Harbor, and associated equipment, offices, warehouses, storage space, roads, paved areas, water banks, beaches and shorelines under the management and control of the City, as the same may be added to, improved and extended for as long as any of the Bonds are Outstanding.

"Harbor Revenue Fund" means the Port of Homer Enterprise Fund of the City.

"Master Ordinance" means this Ordinance 13-15.

"Maximum Annual Debt Service" means, with respect to any Outstanding series of Bonds, the highest remaining Annual Debt Service for such series of Bonds.

"Net Revenue" means Gross Revenue less any part thereof that must be used to pay Operating Expenses.

"Operating Expenses" means the current expenses incurred for operation, maintenance or repair of the Facilities of a non-capital nature, and shall include without limitation labor and supply expenses that are properly chargeable to current operations, utility expenses, customer accounts expenses, administrative and general expenses, insurance premiums, lease rentals, legal and engineering expenses, payments to pension, retirement, group life insurance, health and hospitalization funds or other employee benefit funds that are properly chargeable to current operations, interest on customers' deposits, payroll tax expenses, and any other expenses required to be paid under the provisions of this Master Ordinance or by law or permitted by standard practices for public enterprises similar to the properties and business of the Harbor and applicable in the circumstances. Operating Expenses shall not include payments of taxes or assessments (or payments in lieu of taxes or assessments) to the City, payments with respect to judgments, any allowances for depreciation or amortization, or any principal, redemption price or purchase price of, or interest on, any obligations of the City incurred in connection with the Facilities and payable from Gross Revenue.

"Outstanding" means, as of any date, any Bonds theretofore issued except such Bonds deemed to be no longer Outstanding as provided in the Series Ordinance authorizing the issuance thereof.

"Parity Bonds" means any Bonds issued in the future under a Series Ordinance which provides that such Bonds shall be on a parity of lien with other series of Bonds issued pursuant to this Master Ordinance, as provided in Section 3.

"Rate Covenant" means the covenant of the City set forth in Section 6(a).

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

"Registrar" means the City Finance Director, or any person that the Council may appoint from time to time by resolution or by a Series Ordinance, to act as registrar for one or more series of Bonds.

"Reserve Requirement" means, for any series of Bonds, an amount equal to the least of (i) Maximum Annual Debt Service with respect to the Outstanding Bonds of such series; (ii) 125% of average Annual Debt Service with respect to the Outstanding Bonds of such series; (iii) 10% of the initial principal amount of the Bonds of such series; and (iv) any lesser amount that may be required from time to time under the Code for the exclusion of interest on the Bonds from gross income for federal income tax purposes.

"Series Ordinance" means an ordinance authorizing the issuance of a series of Bonds, as such ordinance may thereafter be amended or supplemented. Each Series Ordinance shall be supplemental to this Master Ordinance.

"2013 Bonds" means the City of Homer, Alaska, Harbor Revenue Bonds, 2013 authorized by Ordinance 13-16.

Section 2. Priority of Use of Gross Revenue. The Gross Revenue shall be deposited in the Harbor Revenue Fund as collected. The City also may deposit in the Harbor Revenue Fund any other monies that are legally available for that purpose. The Harbor Revenue Fund shall be held separate and apart from all other funds and accounts of the City, and the Gross Revenue deposited therein shall be used only for the following purposes and in the following order of priority:

First, to pay Operating Expenses not paid from other sources;

Second, to make all payments, including sinking fund payments, required to be made into the special fund or account provided for the payment of the Bonds of each series to pay the principal of and interest and premium, if any, on any Bonds;

Third, to make all payments required to be made into any reserve account(s) to secure the payment of any Bonds;
Fourth, to make all payments required to be made into any other revenue bond redemption fund and debt service account or reserve account created therein to pay and secure the payment of the principal of and interest on any revenue bonds or other revenue obligations of the City having a lien upon Net Revenue and the money in the Harbor Revenue Fund junior and inferior to the lien thereon for the payment of the principal of and interest on any Bonds; and

Fifth, to retire by redemption or purchase in the open market any outstanding harbor revenue bonds or other harbor revenue obligations of the City as authorized in the various ordinances of the City authorizing their issuance, or to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the Facilities, or any other lawful City purposes, except to the extent of any deficiencies in payments for Second, Third or Fourth purposes.

Section 3. Authorization of Bonds. The City hereby is authorized to issue revenue bonds of the City, to be known as the "City of Homer, Alaska, Harbor Revenue Bonds," from time to time in series, and without limitation as to aggregate principal amount. Each series of Bonds may be issued in such amount and upon such terms and conditions as the Council may from time to time deem to be necessary or advisable, for any purposes of the Harbor now or hereafter permitted by law, but only upon compliance with the applicable conditions for their issuance in Section 5.

All Bonds shall be Parity Bonds having an equal lien and charge upon Net Revenue upon the fulfillment of the conditions for their issuance under this Master Ordinance. From and after the time of issuance and delivery of the Bonds of each series, and so long thereafter as any of the same remain Outstanding, the City hereby irrevocably obligates and binds itself to set aside and pay out of Net Revenue into the special funds created for the payment of the Bonds of such series, on or before the due date, the amount necessary to pay principal or interest coming due on the Bonds of such series. Said amounts so pledged to be paid into such special funds are hereby declared to be a prior lien and charge upon Gross Revenue superior to all other charges of any kind or nature whatsoever except for Operating Expenses and except for charges equal in rank that may be made thereon to pay and secure the payment of the principal of and interest on Parity Bonds issued under this Master Ordinance.

The Bonds shall not in any manner or to any extent constitute general obligations of the City or of the State of Alaska, or of any political subdivision of the State of Alaska.

Section 4. Series Ordinance. Each series of Bonds shall be authorized by a Series Ordinance, which shall, among other provisions, specify or provide for:

- (a) the authorized principal amount, designation and series of such Bonds;
- (b) the general purpose or purposes for which such series of Bonds is being issued, and the deposit, disbursement and application of the proceeds of the sale of the Bonds of such series;
- (c) the date or dates, and the maturity dates or dates, of the Bonds of such series, and the principal amount maturing on each maturity date;
- (d) the interest rate or rates on the Bonds of such series and the interest payment date or dates therefor;
- (e) the circumstances, if any, under which the Bonds of such series will be deemed to be no longer Outstanding;
- (f) the denominations of, and the manner of dating, numbering, and, if necessary, authenticating, the Bonds of such series;
- (g) the paying agent or paying agents, if any, for the Bonds of such series and the duties and obligations thereof;
- (h) the place or places of payment of the principal, redemption price, if any, or purchase price, if any, of and interest on, the Bonds of such series;
- (i) the Registrar or Registrars, if any, for the Bonds of such series and the duties and obligations thereof;
- (j) the form or forms of the Bonds of such series and the methods, if necessary, for the registration, transfer and exchange of the Bonds of such series;
- (k) the terms and conditions, if any, for the redemption of the Bonds of such series prior to maturity, including the redemption date or dates, the redemption price or prices and other applicable redemption terms;
- (l) the manner of sale of the Bonds of such series;
- (m) if so determined by the City, the authorization of and any terms and conditions with respect to credit support

for the Bonds of such series and the pledge or provision of moneys, assets or security other than Net Revenue to or for the payment of the Bonds of such series or any portion thereof;

(n) a special fund or account to provide for the payment of the Bonds of such series, a special reserve fund or account for the purpose of securing the payment of the principal of and interest on the Bonds of such series, and, if so determined by the City, any other specific funds or accounts for the Bonds of such series and the application of moneys or securities therein; and

(o) any other provisions which the City deems necessary or desirable in connection with the Bonds of such series.

Concurrently with the adoption of this Master Ordinance, the City will adopt Ordinance 13-16, authorizing the issuance of not to exceed \$4,200,000 in aggregate principal amount of 2013 Bonds.

Section 5. Limitations on Issuance of Bonds. Except for the 2013 Bonds, the City shall not issue any series of Bonds or incur any additional indebtedness with a parity lien or charge on Net Revenue with Bonds at the time Outstanding unless it meets the applicable conditions for the issuance of such series in this section.

(a) Project Completion. The City may issue Bonds if the City shall not have been in default of its covenant under Section 6(a) for the immediately preceding Fiscal Year, and the Bonds are being issued to pay Costs of Construction of Facilities for which Bonds have been issued previously and the principal amount of such Bonds being issued for completion purposes does not exceed an amount equal to an aggregate of 15% of the principal amount of Bonds theretofore issued for such Facilities and reasonably allocable to the Facilities to be completed as shown in a written certificate of a City Representative, and there is delivered a Consultant's certificate stating that the nature and purpose of such Facilities has not materially changed.

(b) Any Purposes of the Harbor. The City may issue Bonds if the City shall not have been in default of its covenant under Section 6(a) for the immediately preceding Fiscal Year, and the Bonds are being issued for any purposes permitted under Section 3, upon delivery of a certificate prepared as described in paragraph (1) or (2) of this subsection.

(1) Certificate of the City without a Consultant. The City may deliver a certificate without a Consultant if Net Revenue for the Base Period (confirmed by an independent audit) is not less than the amount of Net Revenue that would be required to fulfill the Coverage Requirement commencing with the first full Fiscal Year following the date on which any portion of interest on the series of Bonds then being issued will be paid from a source other than the proceeds of such series of Bonds.

(2) Certificate of a Consultant. Unless the City may deliver a certificate without a Consultant as provided in paragraph (1) of this subsection, the City shall deliver a certificate of a Consultant demonstrating fulfillment of the Coverage Requirement, commencing with the first full Fiscal Year following the date on which any portion of interest on the series of Bonds then being issued no longer will be paid from the proceeds of such series of Bonds. In making the computations for the purpose of certifying compliance with the Coverage Requirement of this section, the Consultant shall determine Net Revenue by adding the following:

(i) The historic net revenue of the Harbor for the Base Period.

(ii) The net revenue derived from those customers of the Harbor that have become customers during the Base Period or thereafter and prior to the date of such certificate, adjusted to reflect a full year's Net Revenue from each such customer to the extent such net revenue was not included under subparagraph (i) of this paragraph (2).

(iii) The estimated annual net revenue to be derived from any customer under any executed contract for Harbor service, which net revenue was not included in any of the other sources of net revenue described in this paragraph (2).

(iv) The estimated annual net revenue to be derived from the operation of any additions or improvements to or extensions of the Facilities under construction but not completed at the time of such certificate and not being paid for out of the proceeds of sale of such Bonds being issued, and which net revenue is not otherwise included in any of the sources of net revenue described in this paragraph (2)

(v) The estimated annual net revenue to be derived from the operation of any additions and improvements to or

extensions of the Facilities being paid for out of the proceeds of sale of such Bonds being issued.

If the Harbor will not derive any revenue as a result of the construction of additions, improvements or extensions being or to be made to the Facilities within the provisions of subparagraphs (iv) or (v) of this paragraph (2), the estimated annual Operating Expenses of such additions, improvements and extensions shall be deducted from estimated annual net revenue.

The words "historic net revenue" or "net revenue" as used in this paragraph (2) shall mean the Gross Revenue or any part or parts thereof less the normal expenses of maintenance and operation of the Facilities or any part or parts thereof, but before depreciation. Such "historic net revenue" or "net revenue" shall be adjusted to reflect the Harbor rates and charges effective on the date of such certificate if there has been any change in such rates and charges during or after the Base Period.

(c) Refunding for Debt Service Savings. The City may issue Bonds for the purpose of refunding Outstanding Bonds where the Annual Debt Service in each Fiscal Year on all Bonds to be Outstanding after the issuance of the refunding Bonds will not be greater than the Annual Debt Service in the same Fiscal Year if such refunding did not occur.

(d) Compliance with Reserve Requirement. On the date of issuance of any series of Bonds, there shall be on deposit in the reserve fund or account for the Bonds of each series an amount that is not less than the Reserve Requirement for such series.

Section 6. Specific Covenants. The City hereby covenants with the Registered Owners of all Outstanding Bonds for as long as any Bonds remain Outstanding:

(a) Rate Covenant. At all times the City will establish, maintain and collect rentals, tariffs, rates, fees, and charges in the operation of all of the business of the Harbor that will produce Net Revenue in each Fiscal Year at least equal to the greater of:

(1) 120% of the amount required in such Fiscal Year to be paid as Debt Service on Outstanding Bonds, or

(2) the amount required to be deposited during such Fiscal Year from Net Revenue (i) into bond funds and reserve funds established for Outstanding Bonds, but excluding from each of the foregoing payments made from refunding debt or capitalized Debt Service; plus (ii) the amount required to be deposited into any other revenue bond redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or other revenue obligations of the City having a lien upon Net Revenue and the money in the Harbor Revenue Fund junior and inferior to the lien thereon for the payment of the principal of and interest on any Bonds.

The City shall cause the rate coverage calculation described in this Section 6(a) to be made no later than 90 days following the end of each Fiscal Year in which Bonds are Outstanding.

If the Net Revenue in any Fiscal Year is less than required to fulfill the Rate Covenant, then the City will retain a Consultant to make recommendations as to operations and the revision of schedules of rentals, tariffs, rates, fees and charges, and on the basis of such recommendations and other available information the City will establish such rentals, tariffs, rates, fees and charges for Harbor services and operations as are necessary to meet the Rate Covenant. If the City has taken the steps set forth in this paragraph and the Net Revenue in the Fiscal Year in which adjustments are made nevertheless is not sufficient to meet the Rate Covenant, there shall be no default under the Rate Covenant unless the City fails to meet the Rate Covenant in the Fiscal Year immediately succeeding the Fiscal Year in which the adjustments are made.

(b) Maintenance and Repairs. The City will at all times maintain, preserve and keep the Harbor's properties and every part and parcel thereof in good repair, working order and condition; will from time to time make or cause to be made all necessary and proper repairs, renewals and replacements thereto so that the business carried on in connection therewith may be properly and advantageously conducted, and will at all times operate the Harbor in an efficient manner and at a reasonable cost.

(c) Insurance. The City will at all times carry fire and other casualty insurance on the plant and equipment of the Harbor to the full insurable value thereof, and will also carry adequate public liability insurance and such other forms of insurance as under good business practices are ordinarily carried on such plant and equipment. Such

insurance also may be maintained by the City through a program of self-insurance.

(d) Extensions or Betterments. The City will not expend any of the money in the Harbor Revenue Fund for any extensions or betterments which are not economically sound and which will not contribute to the operation of the Harbor in an efficient and economical manner, unless such extensions are required by law or any regulatory body having jurisdiction.

(e) Accounting. The City will keep and maintain proper books and accounts with respect to the operation of the Harbor in such manner as prescribed by any authorities having jurisdiction over the Harbor and will cause its books of account to be audited annually by competent certified public accountants, copies of which audits shall, upon request, be furnished to Registered Owners of the Bonds. Said audits shall show whether or not the City has in all respects performed and complied with the covenants set forth in this Master Resolution.

(f) Bonding of Employees. All employees and agents of the City collecting or handling money of the City in connection with the management and operation of the Harbor shall be bonded in an amount commensurate with the funds they handle and in an amount sufficient to protect the City from loss.

(g) Disposal of Harbor. The City will not sell, or otherwise dispose of, substantially all of the Facilities or other properties of the Harbor, unless contemporaneously with such sale or disposal there shall be paid into a special fund a sum sufficient (together with investment income thereon) to defease all Bonds then Outstanding to the date or dates on which they first may be redeemed.

The City may sell or dispose of any portion of the Facilities or other properties of the Harbor to related or unrelated entities, provided that if such properties constitute five percent or greater of the "book value" of the Harbor's properties or generate five percent or greater of the Net Revenue of the Harbor at the time of such sale or disposition, the Harbor has on hand a report from a Consultant verifying compliance with the Coverage Requirement for the next three full Fiscal Years.

The City also may sell, dispose of or convey any assets which are no longer deemed to be used or useful to the operations of the Harbor.

Section 7. Amendatory and Supplemental Ordinances.

(a) The Council from time to time and at any time may adopt an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this Master Ordinance, for any one or more of the following purposes:

(1) To provide for the issuance of a series of Bonds pursuant to Section 4, and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed.

(2) To add covenants and agreements of the City for the purpose of further securing the payment of the Bonds; provided that such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the City contained in this Master Ordinance.

(3) To prescribe further limitations and restrictions upon the issuance of Bonds and the incurring of indebtedness by the City payable from Net Revenue which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect.

(4) To surrender any right, power or privilege reserved to or conferred upon the City by the terms of this Master Ordinance.

(5) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this Master Ordinance or in regard to matters or questions arising under this Master Ordinance as the Council may deem necessary or desirable and not inconsistent with this Master Ordinance and which shall not adversely affect the interests of the Registered Owners of the Bonds.

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

(b) With the consent of the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time Outstanding, the Council may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Master Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, 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 Registered Owner of each Bond so affected; or

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

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

(c) Upon the adoption of any supplemental ordinance under this section, this Master Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Master Ordinance of the City and all Registered Owners of Outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental ordinance shall be deemed to be part of the terms and conditions of this Master Ordinance for any and all purposes.

(d) Bonds of any series delivered after the effective date of any amendment adopted under this section to this Master Ordinance or the Series Ordinance with respect to that series may bear a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Bonds modified so as to conform, in the opinion of the City, to the terms of any such supplemental ordinance may be prepared by the City and delivered without cost to the Registered Owners of the affected Bonds then outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

Section 8. Notice to Registered Owners. Except as this Master Ordinance specifically provides otherwise, any notice under this Master Ordinance to Registered Owners of any Bonds may be given by first class mail, postage prepaid, to such Registered Owners at their respective addresses appearing upon the Bond Register maintained by or on behalf of the City.

Section 9. Execution of Instruments by Registered Owners. Any instrument in writing that this Master Ordinance requires or permits to be executed by Registered Owners of Bonds may be in any number of concurrent instruments of similar tenor and may be executed by such Registered Owners in person or by an agent duly appointed by an instrument in writing. The fact and date of the execution by any person of any such instrument may be proved sufficiently for any purpose of this Master Ordinance by either (a) an acknowledgment executed by a notary public or other officer empowered to take acknowledgments of deeds to be recorded in the particular jurisdiction, (b) an affidavit of a witness to such execution sworn to before such a notary public or other officer, or (c) a signature guarantee. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such acknowledgment or affidavit shall also constitute sufficient proof of the authority of such person. The foregoing shall not be construed as limiting the City to such proof, it being intended that the City may accept any other evidence of the matters herein stated which to it may seem sufficient.

Section 10. Ordinances a Contract with Registered Owners. In consideration of the purchase and acceptance of the Bonds by those who shall own the same from time to time, the provisions of this Master Ordinance and of any Series Ordinance shall constitute a contract with the Registered Owners of each Bond, and the obligations of the City under this Master Ordinance and under any Series Ordinance shall be enforceable by any court of competent jurisdiction; and the covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the Registered Owners of any and all of the Bonds.

Section 11. Events of Default. To protect and safeguard the covenants and obligations undertaken by the City securing the Bonds, the City hereby covenants and agrees with the Registered Owners from time to time of the Bonds that the following shall constitute "Events of Default":

(a) If default is made in the due and punctual payment of the principal of or premium, if any, on any of the Bonds when the same become due and payable, either at maturity or by proceedings for redemption or otherwise;

(b) If default is made in the due and punctual payment of any installment of interest on any Bond;

(c) If the City defaults in the observance and performance of any other of the covenants, conditions and agreements on the part of the City contained in this Master Ordinance and such default or defaults continues for a period of 90 days after the City receives from a representative of (a) Registered Owners of not less than 66% in principal amount of the Bonds then Outstanding or (b) the Bond Bank, if the Bond Bank is then the Registered Owner of any of the Bonds, a written notice specifying and demanding the cure of such default;

(d) If the City (except as herein permitted) sells, transfers, assigns or conveys any properties constituting the Facilities or interests therein, or makes any agreement for such sale or transfer;

(e) If an order, judgment or decree is entered by any court of competent jurisdiction: (a) appointing a receiver, trustee or liquidator for the City or the whole or any substantial part of the Facilities; (b) approving a petition filed against the City seeking the bankruptcy, arrangement or reorganization of the City under any applicable law of the United States or the State of Alaska; or (c) assuming custody or control of the City or of the whole or any substantial part of the Facilities under the provisions of any other law for the relief or aid of debtors and such order, judgment or decree is not vacated or set aside or stayed (or, in case custody or control is assumed by said order, such custody or control is not otherwise terminated) within 90 days from the date of the entry of such order, judgment or decree; or

(f) If the City: (i) admits in writing its inability to pay its debts generally as they become due; (ii) files a petition in bankruptcy or seeking a composition of indebtedness under any state or federal bankruptcy or insolvency law; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a receiver of the whole or any substantial part of the Facilities or (v) consents to the assumption by any court of competent jurisdiction under the provisions of any other law for the relief or aid of debtors of custody or control of the City or of the whole or any substantial part of the Facilities.

Section 12. Remedies Available for an Event of Default.

(a) **Waivers of Default.** No delay or omission of the Registered Owners of the Bonds to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or to be an acquiescence therein; and every power and remedy given by this Section to the Registered Owners of Bonds may be exercised from time to time and as often as may be deemed expedient by such Registered Owners.

The Registered Owners of not less than 66% in principal amount of the Bonds at the time outstanding (the "Majority Bondowners"), or their attorneys-in-fact duly authorized, may on behalf of the owners of all of the Bonds waive any past default under this ordinance and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

(b) **Suits at Law or in Equity.** The Majority Bondowners may, upon the happening of an Event of Default, and during the continuance thereof, take such steps and institute such suits, actions or other proceedings all as may be deemed appropriate for the protection and enforcement of the rights of Registered Owners of the Bonds to collect any amounts due and owing the City, or to obtain other appropriate relief, and may enforce the specific performance of any covenant, agreement or condition contained in this Master Ordinance, or in any of the Bonds.

Any action, suit or other proceedings instituted by the Majority Bondowners hereunder shall be brought in the name and on behalf of all Registered Owners of the Bonds, and all such rights of action upon or under any of the Bonds or the provisions of this Master Ordinance may be enforced by the Majority Bondowners without the possession of any of said Bonds and without the production of the same at any trial or proceedings relative thereto except where otherwise required by law, and the respective Registered Owners of said Bonds, by taking and holding the same, shall be conclusively deemed irrevocably to appoint the Majority Bondowners the true and lawful trustee of the respective Registered Owners of the Parity Bonds, with authority to institute any such action, suit or proceeding; to receive as trustee and deposit in trust any sums becoming distributable on account of the Bonds; to execute any paper or documents for the receipt of such money, and to do all acts with respect thereto that the Registered

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Owner of a Bond might have done in person. Nothing herein contained shall be deemed to authorize or empower the Majority Bondowners to consent to accept or adopt, on behalf of any Registered Owner of any Bond, any plan of reorganization or adjustment affecting the Bonds or any right of any Registered Owner thereof, or to authorize or empower the Majority Bondowners to vote the claims of the Registered Owners thereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceeding to which the City shall be a party.

Nothing contained in this Master Ordinance shall, in any event or under any circumstance, be deemed to authorize the acceleration of maturity of principal on Bonds Outstanding, and the remedy of acceleration is expressly denied to the Registered Owners of Bonds Outstanding under any circumstances including without limitation upon the occurrence and continuance of an Event of Default.

(c) Books of City Open to Inspection. The City covenants that if an Event of Default occurs and is not remedied, the books of record and account of the City will at all reasonable times be subject to the inspection and use of the Registered Owners of any Bonds.

The City covenants that if an Event of Default happens and is not remedied, the City will continue to account, as trustee of an express trust, for all Gross Revenues and other money, securities and funds pledged under this Master Ordinance.

Section 13. Severability. If any one or more of the covenants or agreements provided in this Master Ordinance to be performed on the part of the City 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 Master Ordinance and shall in no way affect the validity of the other provisions of this Master Ordinance or of the Bonds.

Section 14. Non-Code Ordinance. This ordinance is not permanent in nature and shall not be codified.

Section 15. Effective Date. This ordinance shall take effect upon passage and approval.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA, this 13th day of May, 2013.

CITY OF HOMER

FRANCIE ROBERTS, MAYOR PRO TEMPORE

ATTEST:

JO JOHNSON, CMC, CITY CLERK

AYES:

NOES:

ABSTAIN:

ABSENT:

First Reading:

Public Reading:

Second Reading:

Effective Date:

Reviewed and approved as to form:

Ordinance 13-15 Authorizing Harbor Revenue Bonds to be Issued in Series to Finance Harbor Improvement

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Walt Wrede, City Manager City Attorney

Date: _____ Date: _____

Ordinance Dates **Ordinance Introduction Date:** Mon Apr 22nd, 2013

Ordinance Public Hearing Date: Mon May 13th, 2013

Ordinance Second Reading Date: Mon May 13th, 2013

Ordinance Effective Date: Tue May 14th, 2013

Ordinance Files  [Plan Holder's List](#)

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