

CITY OF HOMER
HOMER, ALASKA

ORDINANCE NO. 88-17 (Substitute)

AN ORDINANCE OF THE CITY OF HOMER, ALASKA, AUTHORIZING THE ISSUANCE OF A PORT REVENUE BOND OF THE CITY IN A PRINCIPAL AMOUNT NOT TO EXCEED \$1,500,000 FOR THE PURPOSE OF PROVIDING FUNDS NECESSARY FOR CAPITAL IMPROVEMENTS TO THE CITY PORT; PROVIDING FOR THE DATE, FORM, TERMS, MATURITIES AND COVENANTS OF SAID BOND TO BE ISSUED; PROVIDING FOR THE PAYMENTS OF THE PRINCIPAL OF AND INTEREST ON SUCH BOND PROVIDING CERTAIN COVENANTS SAFEGUARDING THE PAYMENT OF SUCH PRINCIPAL AND INTEREST; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Homer (the "City") has previously issued its Municipal Port Facilities Revenue Bond, Series 1970 in the principal amount of \$75,000 (the "1970 Bond") and its Port Revenue Refunding Bond, 1987 in the principal amount of \$860,000; and

WHEREAS, the City now desires to authorize the issuance and sale of a port revenue bond of the City authorized herein (the "Bond") for the purpose of providing funds for certain capital improvements to the City's Port Facilities System;

NOW, THEREFORE THE CITY OF HOMER ORDAINS, as follows:

Section 1. Definitions. As used in this ordinance, the following words shall have the following meanings:

"Bond Registrar" means the Finance Director of the City authorized in this ordinance to act as Bond Registrar.

"Bond" means the City of Homer Port Revenue Bond, 1988, to be issued in the aggregate principal amount not to exceed \$1,500,000 authorized pursuant to this ordinance.

"Bond Redemption Fund" means the 1987 Revenue Refunding Bond Redemption Fund created in Ordinance 87-24S for the uses and purposes therein provided.

"City" means the City of Homer, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Alaska.

"Council" means the council of the City of Homer as the same shall be duly and regularly constituted from time to time.

"Facilities" means the existing public dock of the City together with the pier and extension of such public dock, its small boat harbor and all new docks, warehouses, facilities and appurtenances used in connection therewith, as all of such facilities may be added to, improved or extended, for as long as the Bond and any future Parity Bonds are outstanding.

"Parity Bonds" means any port revenue bonds which the City may hereafter issue having a lien and charge upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien and charge upon the Revenue of the System of the Bond and the City of Homer Port Revenue Refunding Bond, 1987.

"Revenue" means all rates, charges, or other income and receipts in each case derived by or for the account of the City arising from the operation or ownership of the System.

"Revenue Fund" means the Homer Municipal Port Facilities Revenue Fund created by Ordinance 71-6 for the uses and purposes provided therein.

"Senior Bonds" means the Municipal Port Facilities Revenue Bond, Series 1970, issued in the principal amount of \$75,000 and any bonds issued on a parity with such bond.

"System" means the existing port of the City as the same may be added to, improved and extended for as long as any Parity Bonds are outstanding.

Section 2. Compliance With Existing Parity Conditions.

A. The City hereby finds and determines, pursuant to Ordinance 71-6 of the City, that the City has reserved the right to issue revenue bonds of the City which have a lien upon the money in the Revenue Fund junior or inferior to the charges on such money for the payment of the principal of and interest on Senior Bonds.

B. The City finds and determines, pursuant to Ordinance 87-24S of the City, that the City has reserved the right to and has met the requirements necessary to issue revenue bonds for the purpose of acquiring, constructing, equipping or making additions, improvements or repairs to or extensions or replacements of the Facilities, including but not limited to, any new docks, warehouses or similar facilities or additions, improvements and extensions which are necessary to or a proper part of the use and operation of the Facilities, and to pledge that payments shall be made out of the Revenue Fund into the Bond Redemption Fund and

any applicable reserve account to pay and secure the payment of the principal of and interest on the Bonds. In particular, the City finds:

(1) That the additions, improvements or repairs to or extensions and replacements of the Facilities to be constructed, acquired or made out of the proceeds of sale of the Bonds are to be made a part of the Facilities by the Council and the Revenues to be derived from the operation thereof are pledged to the Revenue Fund and as additional security for the Bonds and all Parity Bonds.

(2) That at the time of the issuance of the Bonds, there is no deficiency in the Bond Redemption Fund.

(3) That all of the covenants contained in Ordinance 87-24S applicable to the City of Homer Port Revenue Refunding Bond, 1987 that are able to be applicable to the Bonds shall be applicable to the Bonds.

(4) That the "annual income available for revenue bond debt service" for each calendar year subsequent to the year of the issuance of the Bonds will equal at least 1.25 times the maximum annual debt service on all outstanding bonds payable out of the Bond Redemption Fund.

Such "annual income available for revenue bond debt service" shall be determined by adding the following:

(a) The net revenue of the City for a period of any 12 months out of the 18 months immediately preceding the month of delivery of the Bonds shall be determined from a

financial statement furnished the City by a certified public accountant or an official of the auditing department of the State of Alaska, which such audit or statement shall be certified to by the City Treasurer.

The words "net revenue" as used in the immediately preceding paragraph (a) shall mean the gross revenue derived by the City from its use and operation of the Facilities for said 12-month period less any amount expended therefrom during said period for necessary costs of maintenance and operation (excluding depreciation) of the Facilities and for normal costs of administration of the business of the Facilities.

Such 12 months' net revenue shall be adjusted to reflect the tariffs, rentals, rates and charges and other Revenues in effect on the date of such certificate if any change was made therein from the date of commencement of such 12-month period to the date of such certificate; and shall also be adjusted to reflect any change in such net revenue caused by any new additions or improvements to or extensions of the Facilities having been put into use and operation from the date of commencement of such 12-month period to the date of such certificate.

(b) The estimated net revenue to be derived by the City from the lease, use and operation of the additions, improvements or extensions to be acquired, constructed or installed out of the proceeds of the sale of the Bonds and from the lease, use and operation of any other additions and improvements to and extensions of the Facilities actually under construction but

which will not be put into use and operations until after the date of such certificate, as determined by a statement from an independent licensed professional engineer experienced in the design and operation of port facilities in the State of Alaska.

The words "estimated net revenue" as used in the immediately preceding paragraph (b) shall mean the gross revenue to be derived by the City from a 12-month lease, use and operation of such additions, improvements and extensions required to be deposited into the Revenue Fund less the necessary costs of maintenance and operation of the same for the same 12-month period.

(5) That at the time of the issuance of the Bond the City shall also have on file a certificate from the City Finance Director or from some other person experienced in the operation and management of port facilities in the State of Alaska to the effect that the City should be able to operate the Facilities and all additions and improvements thereto and extensions thereof throughout the life of any outstanding bonds payable out of the Bond Redemption Fund and the Bonds being issued in such a manner that will produce net revenue approximately equal to the 12 months' net revenue shown in the certificate required in the preceding subsection (4).

Section 3. Description of Bond. For the purpose of providing funds necessary to make capital improvements to the system, the City shall issue the Bond in an aggregate principal amount not to exceed \$1,500,000.

The Bond shall be designated "City of Homer Alaska Port Revenue Bond, 1988," and shall be in the total principal amount not to exceed \$1,500,000. The Bond shall be in the aggregate principal amount, shall have such reserve account provisions, shall be dated, shall have such redemption provisions, shall bear interest at the rate or rates and mature in principal installments all as provided in a subsequent resolution of the City Council.

The Bond shall be in registered form as to both principal and interest. The Bond Registrar shall maintain the Bond Register. Such Bond Register shall contain the name and mailing address of the owner of each Bond or nominee of such owner and the principal amount and number of bonds held by each owner or nominee.

Upon surrender thereof to the Bond Registrar, the Bond is interchangeable for bonds in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Such exchange or transfer shall be without cost to the owner or transferee.

Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Principal and interest on the Bond shall be paid by check or draft mailed to the registered owner or assigns at the addresses appearing on the

Bond Register as of the 15th day of the month preceding the principal and interest payment date.

Section 4. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. _____

\$ _____

STATE OF ALASKA

CITY OF HOMER

PORT REVENUE BOND, 1988

Registered Owner:

Principal Amount:

THE CITY OF HOMER, ALASKA (the "City"), 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 and to pay interest thereon from the date hereof, or the most recent date to which interest has been paid or duly provided for, payable _____.

This bond shall bear interest at the rate of _____.

Both principal of and interest on this bond are payable in lawful money of the United States of America. Principal and interest shall be paid by mailing a check or draft to the registered owner or assigns at the address shown on the registration books of the Bond Registrar (the "Bond Register") as of the 15th day of the month prior to the interest payment date.

Reference is hereby made to additional provisions of this bond set forth on the reverse side hereof and such additional provisions shall for all purposes have the same effect as if set forth in this space.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under Ordinance No. 88-175 of the City (the "Bond Ordinance") until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

10/19/88

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It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Alaska to exist, to have happened, been done and performed precedent to and in the issuance of this bond have happened, been done and performed and that the issuance of this bond does not violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, the City has caused this bond to be executed by the signature of its Mayor and attested by its Clerk, and the seal of the City to be impressed hereon, as of the 24th day of October, 1988.

CITY OF HOMER, ALASKA

By John P. Callahan
Mayor

ATTEST:

Patricia J. Whalen
City Clerk

[Seal]

ADDITIONAL BOND PROVISIONS

This bond is the City of Homer, Alaska Port Revenue Bond, 1988, in the aggregate principal amount of \$1,500,000, and is issued for the purpose of providing funds to pay the cost of improvements to the System as defined in the Bond Ordinance.

The bond is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Alaska and ordinances duly passed by the Council of the City.

The bond is not a general obligation of the City.

The bond is payable out of moneys in the Homer Municipal Port Facilities Revenue Fund, into which the City has pledged shall be paid as collected all tariffs, rentals, rates and charges derived by it from its operation of all of its Facilities as the same are defined in the Bond Ordinance.

The City hereby covenants and agrees with the owner and holder of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed.

The City does hereby pledge and bind itself to set aside from the money in its Municipal Port Facilities Revenue Fund and to pay into the Bond Redemption Fund the various amounts required by said Bond Ordinance to be paid into and maintained in said Fund, all within the times provided by said Ordinance.

The amounts so pledged to be paid into and maintained in said Bond Redemption Fund are hereby declared to be a lien and charge upon the money in such Homer Municipal Port Facilities Revenue Fund inferior and junior to the amounts required to be maintained or paid pursuant to Ordinance No. 71-6 with respect to Senior Bonds as defined in the Bond Ordinance, and the necessary cost of maintenance and operation of the Municipal Port Facilities, equal in rank to any charges that may be made later on such Revenue Fund to pay and secure the payment of the principal of and interest on any Parity Bonds as defined in the Bond Ordinance, and superior in rank to all other charges of any kind or nature on the Revenues.

The City has further bound itself to maintain the Facilities as defined in the Bond Ordinance in good condition and repair, to operate the same in an efficient manner and at a reasonable cost, and to establish, maintain and collect tariffs, rentals, rates and charges and the Revenues for the use of such Facilities for as long as the bond of this issue and any bonds which may be issued later on a parity therewith are outstanding that will produce Revenue available for debt service on all of such bonds as the same shall become due in an amount equal to at least 1.25 times the maximum amount required in any calendar year to pay such debt service after necessary costs of maintenance and operation of the Facilities have been paid, but before depreciation.

The Bond is interchangeable for bonds of any authorized denomination of equal aggregate principal amount and of the same interest rate and maturity upon presentation and surrender to the Bond Registrar.

The Bond Registrar's Certificate of Authentication on the Bond shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

This bond is the Port Revenue Bond, 1988 of the City of Homer, Alaska, dated _____.

_____ as Bond Registrar

By _____ Authorized Officer

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 Bond Registrar to transfer said bond on the books kept for registration thereof with full power of substitution in the premises.

DATED: _____, 19____.

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 5. Execution of Bond. The Bond shall be executed on behalf of the City by the Mayor and attested by the City Clerk, and shall have the seal of the City impressed thereon.

Only such bonds as shall bear thereon a Certificate of Authentication in the form thereinbefore recited, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

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

Section 6. Bond Registrar. The City hereby designates the City Finance Director to act as Bond Registrar for the Bond. The Bond Registrar shall keep, or cause to be kept, sufficient books

for the registration and transfer of the Bond. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond transferred or exchanged in accordance with the provisions of such Bond and this ordinance and to carry out all of the Bond Registrar's powers and duties under this ordinance.

The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bond.

Section 7. Revenue Fund. There has heretofore been created in Ordinance 71-6 a special fund of the City known as the "Homer Municipal Port Facilities Revenue Fund" (hereinbefore defined as the "Revenue Fund"). The City hereby covenants and agrees that all tariffs, rentals, rates and charges and other Revenues derived by it from its operation of the Facilities shall be deposited in the Revenue Fund. Moneys in such Fund shall be held in the custody of the Treasurer of the City and shall be kept separate and apart from all other moneys of the City.

All costs of maintaining and operating the Facilities, all costs of additions, betterments, improvements and repairs to and replacements and extensions of the Facilities (except when the same are financed by the issuance of bonds), all payments required to be made into the Bond Redemption Fund, all payments which may be required later to pay and secure the payment of the principal of and interest on any revenue bonds of the City which may later be issued and which will be a charge upon such tariffs, rentals, rates and charges and other Revenues, and all payments which may be legally required later for any other proper purposes

in connection with the operation of the Facilities shall be paid out of the Revenue Fund.

Section 8. Bond Redemption Fund. There has heretofore been created in Ordinance 87-24S a special fund of the City known as the "1987 Revenue Refunding Bond Redemption Fund" (hereinbefore defined as the "Bond Redemption Fund"), which shall be at all times completely segregated and set apart from all other funds of the City and shall be a trust fund for the security and payment of the principal of and interest on the Bond and on any and all Parity Bonds as the same shall become due.

The City hereby obligates and binds itself for as long as the Bond is outstanding and unpaid to set aside and pay into the Bond Redemption Fund out of the money in the Revenue Fund those amounts which are necessary, together with any other moneys on deposit in the Bond Redemption Fund, to pay the principal of and interest on the Bond as the same respectively become due and payable. Said payments shall be made at least 45 days prior to the respective dates on which such installments of principal and interest shall become due.

Said amounts so pledged to be paid out of the Revenue Fund into the Bond Redemption Fund are hereby declared to be a lien and charge upon the money in the Revenue Fund inferior and junior to the amounts required to be maintained or paid pursuant to Ordinance 71-6 with respect to Senior Bonds, and the necessary costs of maintenance and operation of the Facilities, equal in rank to the charges to pay and secure the payment of the

principal of and interest on any Parity Bonds, and superior to all other charges of any kind or nature on the Revenues.

In the event that money and/or direct obligations of the United States of America maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire the Bond in accordance with their terms are set aside in the Bond Redemption Fund to effect such redemption and 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 to be made into the Bond Redemption Fund for the payment of the principal of and interest on the Bond, and the Bond and the coupons appurtenant thereto shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and the Bond and/or such coupons shall be deemed not to be outstanding hereunder.

Section 9. Fund Transfers. In the event it becomes necessary to meet the payments required in this ordinance and any other ordinance of the City authorizing the issuance of Parity Bonds to be made into the Bond Redemption Fund, the City may transfer moneys into such Fund from any other funds or accounts of the City where the money therein is legally available for such transfer. No money deposited in the Bond Redemption Fund may be withdrawn for any purposes whatsoever other than the payment of the principal of, premium if any, and interest on any bonds payable out of such Fund.

Section 10. Adequacy of Revenues. The corporate authorities of the City hereby declare, in fixing the amounts to be paid into the Bond Redemption Fund as hereinabove provided, that they have exercised due regard to the necessary costs of maintenance and operation of the Facilities and have not obligated the City to set aside and pay into said Fund a greater amount of the Revenue of the Facilities than in their judgment will be available over such costs of maintenance and operation.

Section 11. General Covenants. The City hereby covenants and agrees with the owner and holder of the Bond for as long as the same remains outstanding as follows:

a. That it will establish, maintain and collect tariffs, rentals, rates and charges and other Revenues for the use of the Facilities that will provide Revenue available for debt service on the Bond and any Parity Bonds as the same shall become due in an amount at least equal to 1.25 times the maximum amount required in any calendar year hereafter to pay the principal of and interest on all of such bonds after necessary costs of maintenance and operation of the Facilities have been paid, but before depreciation.

b. That it will at all times keep or arrange to keep all of the insurable portions of the Facilities insured against loss or damage by fire, with extended coverage and protection against loss by explosion, storm damage and other casualties usually insured against in the ordinary course of business, in amounts sufficient to provide for not less than full recovery whenever a

loss from perils insured against does not exceed 80% of the full insurable value of the damaged facility or Facilities; and will further keep all of the Facilities covered by war risk insurance to the extent that the same is or may become available.

That it will at all times keep or arrange to keep in full force and effect policies of public liability and property damage insurance insuring against damages that may result from the use, occupancy or operation of the Facilities and which will protect the City against anyone claiming damages of any kind or nature arising from such use, occupancy or operation. The policy covering public liability from bodily injury or death claims shall be not less than \$100,000 for any single claim and not less than \$300,000 for all bodily injury or death claims arising out of one accident. The policy covering property damage claims shall be not less than \$50,000.

The proceeds of any and all such insurance received because of damage to or destruction of all or any part of the Facilities and not used in repairing or rebuilding the Facilities shall be deposited in the Bond Redemption Fund and shall be held subject to the provisions of this ordinance regarding the use and application of the moneys deposited in such Fund.

c. That it will duly and punctually pay or cause to be paid into the Bond Redemption Fund the principal of and interest on the Bond at the times and places as herein and in said Bond provided; that it will faithfully do and perform and at all times

observe any and all covenants, undertakings and provisions contained in this ordinance and in the Bond.

d. That it will at all times keep and maintain the Facilities in good repair, working order and condition and will at all times operate the same and the business or businesses in connection therewith in an efficient manner and at a reasonable cost.

e. That it will retain title to the Facilities for their useful life and such Facilities will be devoted to public purposes and will not be for the exclusive use of any particular user.

f. That it will keep proper records and books of account relating to the Facilities in accordance with generally accepted accounting practices for facilities of like type and size, in which complete and correct entries shall be made of all pertaining transactions. That on or before 60 days after the end of each fiscal year of the City it will provide to any Bondholder who shall request the same in writing an annual audit prepared by a certified public accountant or official of the auditing department of the State of Alaska reflecting the financial condition and operation of the City, the Facilities, and any other facilities or properties of the City which may produce Revenue pledged to the payment of the Bond and any Parity Bonds.

Section 12. Issuance of Future Parity Bonds. The City hereby further covenants and agrees with the owner and holder of the Bond for as long as the same remains outstanding that it will not issue any future Parity Bonds except:

A. That the City reserves the right for:

First, the purpose of acquiring, constructing, equipping or making additions, improvements or repairs to or extensions or replacements of the Facilities, including but not limited to, any new docks, warehouses or similar facilities or additions, improvements and extensions which are necessary to or a proper part of the use and operation of the Facilities, or

Second, to fund or refund any obligations of the City which have a lien upon the money in the Revenue Fund junior or inferior to the lien thereon created herein for the payment of the principal of and interest on the Bond, and to pledge that payments shall be made out of the Revenue Fund into the Bond Redemption Fund and any applicable reserve account to pay and secure the payment of the principal of and interest on such future Parity Bonds on a parity with the payments required by this ordinance to be made into the Bond Redemption Fund and any applicable reserve account from the Revenue Fund to pay and secure the payment of the principal of and interest on the Bond upon compliance with the following conditions:

(1) That such additions, improvements or repairs to or extensions and replacements of the Facilities to be constructed, acquired or made out of the proceeds of sale of the future Parity Bonds are made a part of the Facilities by the Council and the Revenues to be derived from the operation thereof are pledged to the Revenue Fund and as additional security for the Bond outstanding and such future Parity Bonds.

(2) That at the time of the issuance of such future Parity Bonds there is no deficiency in the Bond Redemption Fund.

(3) That the City will also provide in each such ordinance authorizing the issuance of future Parity Bonds that all of the covenants contained in this ordinance that are applicable to the Bond and are able to be applicable to such future Parity Bonds shall be made applicable to such future Parity Bonds.

(4) That the "annual income available for revenue bond debt service" for each calendar year subsequent to the year of the issuance, of the future Parity Bonds will equal at least 1.25 times the maximum annual debt service on all outstanding bonds payable out of the Bond Redemption Fund.

Such "annual income available for revenue bond debt service" shall be determined by adding the following:

(a) The net revenue of the City for a period of any 12 months out of the 18 months immediately preceding the month of delivery of such future Parity Bonds shall be determined from a financial statement furnished the City by a certified public accountant or an official of the auditing department of the State of Alaska, which such audit or statement shall be certified to by the City Treasurer.

The words "net revenue" as used in the immediately preceding paragraph (a) shall mean the gross revenue derived by the City from its use and operation of the Facilities for said 12-month period less any amount expended therefrom during said period for necessary costs of maintenance and operation

(excluding depreciation) of the Facilities and for normal costs of administration of the business of the Facilities.

Such 12 months' net revenue shall be adjusted to reflect the tariffs, rentals, rates and charges and other Revenues in effect on the date of such certificate if any change was made therein from the date of commencement of such 12-month period to the date of such certificate; and shall also be adjusted to reflect any change in such net revenue caused by any new additions or improvements to or extensions of the Facilities having been put into use and operation from the date of commencement of such 12-month period to the date of such certificate.

(b) The estimated net revenue to be derived by the City from the lease, use and operation of the additions, improvements or extensions to be acquired, constructed or installed out of the proceeds of the sale of such future Parity Bonds and from the lease, use and operation of any other additions and improvements to and extensions of the Facilities actually under construction but which will not be put into use and operations until after the date of such certificate, as determined by a statement from an independent licensed professional engineer experienced in the design and operation of port facilities in the State of Alaska.

The words "estimated net revenue" as used in the immediately preceding paragraph (b) shall mean the gross revenue to be derived by the City from a 12-month lease, use and operation of such additions, improvements and extensions required to

be deposited into the Revenue Fund less the necessary costs of maintenance and operation of the same for the same 12-month period.

(5) That at the time of the issuance of the Bond the City shall also have on file a certificate from the City Finance Director or from some other person experienced in the operation and management of port facilities in the State of Alaska to the effect that the City should be able to operate the Facilities and all additions and improvements thereto and extensions thereof throughout the life of any outstanding bonds payable out of the Bond Redemption Fund and the future Parity Bonds being issued in such a manner that will produce net revenue approximately equal to the 12 months' net revenue shown in the certificate required in the preceding subsection (4).

B. The City further reserves the right to issue refunding Parity Bonds for the purpose of refunding by exchange or purchasing at or prior to their maturity any part or all of any bonds payable out of the Bond Redemption Fund, and to pledge that payments shall be made out of the Revenue Fund into the Bond Redemption Fund to pay and secure the payment of the principal of and interest on such refunding future Parity Bonds on a parity with the payment required in this ordinance to be made into the Bond Redemption Fund from the Revenue Fund to pay and secure the payment of the principal of and interest on the Bond and any future Parity Bonds that might then be outstanding if the conditions fixed in paragraph (1), (2), (3) and (5) of subsection A of this

section are met and if the issuance of such refunded future Parity Bonds does not require a greater amount to be paid out of the Revenue Fund thereafter to pay the principal of and interest on such refunding future Parity Bonds over their life than the amount required to be paid out of such Revenue Fund thereafter to pay the principal of and interest on the bonds being refunded over their life. Any premiums and incidental costs paid to effect such refunding shall not be computed in determining such amounts.

C. Nothing herein contained shall be construed to prevent the City from issuing revenue bonds or revenue warrants the payment of the principal of and interest on which is a charge upon the money in the Revenue Fund junior or inferior to the charges and other Revenues on such money for the payment of the principal of and interest on the Bond and any future Parity Bonds.

Section 13. Tax Covenants. The City hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of such Bond pursuant to Section 148(a) of the Internal Revenue Code and the applicable regulations thereunder which will cause the Bond to be an "arbitrage bond" within the meaning of said section and said regulations. The City will comply with the requirements of subsection (a) of Section 148 of the Internal Revenue Code and the applicable regulations thereunder throughout the term of the Bond. The City covenants that it will not act or fail to act in

a manner which will cause the Bonds to be considered obligations not described in Section 103(a) of the Internal Revenue Code.

The City will take no actions and will make no use of the proceeds of the Bonds or any other funds held under this Ordinance which would cause the Bonds to be treated as a "private activity bond" as defined in Section 141 of the Internal Revenue Code then in effect.

Section 14. Special Tax Covenants and Designation.

The City hereby designates the Bond as "qualified tax-exempt obligation" under Section 265(b) of the Internal Revenue Code for investment by financial institutions. The City does not anticipate that it will issue more than \$10,000,000 of qualified tax-exempt obligations during 1988.

Section 15. Sale of the Bond. The Bond shall be sold in accordance with this Ordinance and the provisions of a subsequent Resolution of the City Council.

The proper City officials are hereby authorized and directed to do everything necessary for the prompt execution and delivery of the Bond and for the proper application and use of the proceeds of sale thereof.

Section 16. Additional Actions. The proper City officials are hereby authorized and directed to do everything necessary for the prompt execution and delivery of the Bond and for the proper application and use of the proceeds of sale thereof.

Section 17. Severability. If one or more of the covenants or agreements provided in this 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 ordinance and shall in no way effect the validity of the other provisions of this ordinance or of the Bond.

Section 18. Effective Date. This ordinance shall become effective immediately.

PASSED by the Council of the City of Homer, Alaska, at a regular meeting held on the 24th day of October, 1988.

CITY OF HOMER, ALASKA

BY John P. Calloway
Mayor

ATTEST:

Patti J. Whalen
City Clerk

Published: October 13th & 20th, 1988

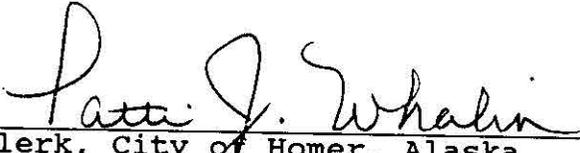
CERTIFICATE

I, the undersigned, the duly chosen, qualified and acting Clerk of the City of Homer, Alaska (the "City") and keeper of the records of the Council of the City (herein called the "Council") DO HEREBY CERTIFY:

1. That the attached Ordinance No. 88-17(S) (herein called the "Ordinance") is a true and correct copy of an ordinance of the City, as finally passed at a meeting of the Council held on the 24th day of October, 1988, and duly recorded in my office.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of October, 1988.


Clerk, City of Homer, Alaska