

NON CODE ORDINANCE

Prepared by: City Attorney  
Requested by: City Engineer  
Introduced: April 22, 2002  
Public Hearing: April 29, 2002  
Adopted: April 29, 2002  
Vote: Unanimous; Lowe absent

**CITY OF WASILLA  
ORDINANCE SERIAL NO. 02-24**

**AN ORDINANCE OF THE WASILLA CITY COUNCIL AUTHORIZING UTILITY REVENUE BONDS OF THE CITY TO BE ISSUED IN SERIES TO FINANCE WATER AND WASTEWATER IMPROVEMENTS; CREATING A LIEN UPON NET REVENUES OF THE CITY WATER AND WASTEWATER UTILITIES FOR THE PAYMENT OF THE BONDS; AND ESTABLISHING COVENANTS OF THE CITY RELATED TO THE BONDS.**

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WHEREAS, the City of Wasilla, Alaska (the "City") is a first class city, and under the provisions of AS 29.47.240, the City may issue revenue bonds for a public enterprise or public corporation of the City where the only security is the revenue of the public enterprise or corporation; and

WHEREAS, the City owns and operates a water utility and a wastewater utility (collectively, as further defined in Section 2 hereof, the "Utility") as a public enterprise under Chapters 13.04 and 13.08 of the Wasilla Municipal Code; and

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

WHEREAS, the City has issued the following currently outstanding Utility revenue obligations: (i) Alaska Drinking Water Fund Agreement (ADEC Loan No. 905011), dated September 3, 1998, in the original principal amount of \$177,100; (ii) Alaska Drinking Water Fund Agreement (ADEC Loan No. 905021), dated January 8, 2002, in the original principal amount of \$905,000; and (iii) Alaska Clean Water Fund Agreement (ADEC Loan No. 905031), dated January 8, 2002, in the original principal amount of \$580,100 (collectively, as further defined in Section 2 hereof, the "Senior Lien Obligations"); and

WHEREAS, it is advisable and in the best interest of the City to establish a separate lien, subordinate to the Senior Lien Obligations, of Utility revenue bonds of the City hereafter issued for any lawful purpose of the Utility under the provisions, terms and conditions of this ordinance; 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 Utility revenue bonds

to finance improvements to the City's water and wastewater utility systems, and for any other purpose of those utility systems now or hereafter permitted by law.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the City of Wasilla:

\* **Section 1. Classification.** This ordinance is a non-code ordinance.

\* **Section 2. Definitions.** The following terms shall have the following meanings in this Master Ordinance:

"Aggregate Annual Debt Service" means Annual Debt Service for all Outstanding Senior Lien Obligations and Outstanding Bonds.

"Annual Debt Service" means the total amount of Debt Service for any Senior Lien Obligation, 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.

"Bondowner" means the registered owner of any Bond.

"Bondowners' Trustee" means the bank or trust company appointed pursuant to Section 18 of this Master Ordinance.

"Bonds" means the bonds, notes or other evidences of indebtedness issued from time to time in series under authority of Section 5. The term "Bonds" may include reimbursement obligations of the City to the issuer of a Credit Facility.

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

"Consultant" means at any time an independent consultant nationally recognized in water and sewer utility matters or an engineer or engineering firm appointed by the City to perform the duties of the Consultant as required by this Master Ordinance. For the purposes of delivering any certificate required by Section 7 and making the calculation required by Section 7, the term Consultant also shall include any independent national 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 from the proceeds thereof; 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 Revenues equal to or greater than 125% of Aggregate Annual Debt Service.

"Credit Facility" means a policy of municipal bond insurance, a letter of credit, surety bond, line of credit, guarantee, standby purchase agreement or other financial instrument which obligates a third party to make payment or provide funds for the payment of financial obligations of the City, including without limitation the payment of the principal of, interest on or purchase price of Bonds or meeting reserve requirements therefore.

"Debt Service" means, for any period, an amount equal to (A) with respect to any Senior Lien Obligations, the amounts required to be paid as principal and interest on such Senior Lien Obligations during that period; and (B) with respect to any Bonds, (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. Debt service shall include reimbursement obligations to providers of Credit Facilities (other than Credit Facilities obtained to satisfy reserve requirements), which support Debt Service to the extent authorized in a Series Ordinance.

"Designated City Representative" means the Mayor or the Finance Director, or such other person as may be designated from time to time by resolution of the Council.

"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 Utility 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 July 1 and ending the following June 30.

"Finance Director" means the Finance Director of the City.

"Gross Revenue" means all income, receipts and revenue derived by or for the account of the Utility from time to time from any source from the ownership, leasing or operation of the Facilities whatsoever except:

(A) the proceeds of any borrowing by the City and the earnings thereon (other than earnings on proceeds deposited in reserve funds),

(B) payments under Credit Facilities issued to pay or secure the payment of a particular series of Bonds;

(C) proceeds of insurance or condemnation proceeds other than business interruption insurance;

(D) income and revenue of the Utility separately pledged and used by it to pay and secure the payment of the principal of and interest on any issue or series of Special Revenue Bonds of the Utility issued to acquire, construct equip, install or improve part or all of the particular facilities from which such income and revenue are derived, provided that nothing in this subparagraph (D) shall permit the withdrawal from Gross Revenue of any income or revenue derived or to be derived by the Utility from any income producing Facilities which shall have been contributing to Gross Revenue prior to the issuance of such Special Revenue Bonds; and

(E) income from investments irrevocably pledged to the payment of bonds issued or to be defeased under any refunding bond plan of the Utility.

"Master Ordinance" means this Ordinance Serial No. 02-24.

"Maximum Annual Debt Service" means, with respect to any Outstanding series of Bonds or Senior Lien Obligations, the highest remaining Annual Debt Service for such series of Bonds or Senior Lien Obligations, as the case may be.

"Net Revenues" 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 payments required by any service agreements, source of supply expenses, distribution 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 which are properly changeable 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 utility systems similar to the properties and business of the Utility (adjusted to reflect public ownership) and applicable in the circumstances. Operating Expenses shall not include 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 Revenues.

"Outstanding" means, as of any date, any Bonds or Senior Lien Obligations theretofore issued except such Bonds or Senior Lien Obligations deemed to be no longer Outstanding as provided in the 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 6.

"Paying Agent" shall mean any person, firm, association, corporation or public body as designated and appointed from time to time by resolution of the Council or by a Series Ordinance to act as paying agent for one or more series of Bonds.

"Rate Covenant" means the covenant of the City set forth in Section 9(A).

"Registrar" means the Finance Director, or any person, firm, association, corporation or public body as designated and appointed from time to time by resolution of the Council or by a Series Ordinance, to act as registrar for one or more series of Bonds.

"Senior Lien Obligations" means the following currently outstanding Utility revenue obligations: (i) Alaska Drinking Water Fund Agreement (ADEC Loan No. 905011), dated September 3, 1998, in the original principal amount of \$177,100; (ii) Alaska Drinking Water Fund Agreement (ADEC Loan No. 905021), dated January 8, 2002, in the original principal amount of \$905,000; and (iii) Alaska Clean Water Fund Agreement (ADEC Loan No. 905031), dated January 8, 2002, in the original principal amount of \$580,100.

"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.

"Special Facilities" means utility properties and assets, real and personal, tangible and intangible, which are declared, resolved or found by the Council to constitute a system which is distinct from the Facilities of the Utility at the time they are financed and which may be financed with the proceeds of Special Revenue Bonds.

"Special Revenue Bonds" means any issue or series of revenue bonds, revenue warrants or other revenue obligations of the City issued to directly or indirectly acquire (by purchase, lease or otherwise), construct, equip, install or improve part or all of particular Special Facilities and which are payable from and secured by the income and revenue from such facilities.

"Utility" means the water and wastewater utilities of the City as the same may be added to, improved and extended for as long as any of the Bonds are Outstanding.

"Utility Revenue Fund" means, collectively, the water utility fund and the wastewater utility fund of the City. The City may combine such funds into one fund, or administer such funds as one fund for the purposes of this Master Ordinance.

\* **Section 3. Priority Lien of Senior Lien Obligations.** The lien and charge of the Senior Lien Obligations on Gross Revenue and the obligation of the Utility to pay principal and interest on the Senior Lien Obligations have priority over the lien and charge of the Bonds. Notwithstanding anything to the contrary contained in this Master Ordinance, any additional money, assets or security pledged to or provided for a series of Bonds shall be security only for such series of Bonds and shall not be available for payment of the Senior Lien Obligations or any other series of Bonds issued pursuant to this Master Ordinance except as may be provided in any Series Ordinance.

\* **Section 4. Priority of Use of Gross Revenue.** The Utility's Gross Revenue shall be deposited in the Utility Revenue Fund as collected. The Utility 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 required to made with respect to Senior Lien Obligations;

Third, to make all payments, including sinking fund payments, required to be made into the debt service account(s) of any Bond redemption fund to pay the principal of and interest and premium, if any, on any Bonds and reimburse providers of Credit Facilities obtained to secure such payments;

Fourth, to make all payments required to be made into any reserve account(s) to secure the payment of any Bonds and reimburse providers of Credit Facilities obtained to satisfy reserve account requirements;

Fifth, 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 Revenues and the money in the Utility Revenue Fund junior and inferior to the lien thereon for the payment of the principal of and interest on any Bonds; and

Sixth, to retire by redemption or purchase in the open market any outstanding utility revenue bonds or other utility 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, Fourth or Fifth purposes.

\* **Section 5. Authorization of Bonds.** Revenue bonds of the City, unlimited in amount, to be known as the "City of Wasilla, Alaska, Utility Revenue Bonds," are hereby authorized to be issued in series, and each such series may be issued from time to time pursuant to this Master Ordinance in such amounts 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 Utility now or hereafter permitted by law.

The Bonds and the lien thereof created and established hereunder shall be obligations only of the special fund(s) established in the Series Ordinance authorizing their issuance. The Bonds shall be payable solely from and secured solely by Net Revenues available after providing for the payments specified in paragraph First and Second of Section 4; provided, however, that any series of Bonds also may be payable from and secured by a Credit Facility pledged specifically to or provided for that series of Bonds.

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 into the special funds created for the payment of each series of Bonds out of Net Revenues, on or prior to the date on which the principal of or interest on the Bonds shall become due, the amount necessary to pay such interest or principal and 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 the lien on Gross Revenue of the Senior Lien Obligations 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 Bonds issued under authority of a Series Ordinance in accordance with the provisions of Sections 6 and 7 of 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 6. Authorization of Series of Bonds.** The City may issue hereunder from time to time one or more series of Bonds by means of a Series Ordinance for any purpose of the Utility now or hereafter permitted by law, provided that the City shall comply with the terms and conditions for the issuance of Bonds hereinafter set forth in this Section 6 and Section 7.

Each series of Bonds shall be authorized by a Series Ordinance which shall, among other provisions, specify and 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 therefore;
- (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 Revenues 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 and, if so determined by the City, any other specific funds or accounts, including, without limitation, reserve funds or accounts, for the Bonds of such series and the application of moneys or securities therein; and



(O) any other provisions which the Utility 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 Serial No. 02-25, authorizing the issuance of \$3,309,000 in aggregate principal amount of City of Wasilla, Alaska Utility Revenue Bonds, 2002A.

\* **Section 7. Parity Bonds.**

(A) Limitations on Issuance of Bonds. All Bonds authorized to be issued under Section 5 shall be Parity Bonds, having an equal lien and charge upon the Net Revenues of the Utility upon fulfillment of the conditions of this Master Ordinance, whether at the time of authorization or issuance of such Bonds. Except as provided in subsection (B) below, the City shall not issue any series of Bonds or incur any additional indebtedness with a parity lien or charge on Net Revenues with Bonds at the time Outstanding unless:

(1) the City shall not have been in default of its covenant under Section 9(A) of this Master Ordinance for the immediately preceding Fiscal Year, and

(2) there shall have been filed a certificate (prepared as described in subsection (C) or (D) below) 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.

(B) No Certificate Required. The certificate described in subsection (A)(2) of this Section 7 shall not be required as a condition to the issuance of Bonds:

(1) if the Bonds being issued are for the purpose of refunding Outstanding Bonds, and such refunding Bonds may be issued without a certificate under the provisions of Section 8; or

(2) if 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 Designated City Representative, and there is delivered a Consultant's certificate stating that the nature and purpose of such Facilities has not materially changed.

(C) Certificate of the City Without a Consultant. If required pursuant to the foregoing subsection (A)(2), a certificate may be delivered by the City without a Consultant if Net Revenues for the Base Period (confirmed by an independent audit) conclusively demonstrate that the Coverage Requirement will be fulfilled 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 not be paid from the proceeds of such series of Bonds.

(D) Certificate of a Consultant. Unless compliance with the requirements of subsection (A)(2) have been otherwise satisfied (as provided in (B) or (C) above), compliance with the Coverage Requirement of this Section 7 shall be demonstrated conclusively by a certificate of a Consultant. In making the computations of Net Revenues for the purpose of certifying compliance with the Coverage Requirement of this Section 7, the Consultant shall use as a basis the Net Revenues for the Base Period. Such Net Revenues shall be determined by adding the following:

(1) The historical net revenue of the Utility for any 12 consecutive months out of the 30 months immediately preceding the month of delivery of the Bonds being issued as determined by a Consultant.

(2) The net revenue derived from those customers of the Utility that have become customers during such 12-month period or thereafter and prior to the date of such certificate, adjusted to reflect a full year's net revenues from each such customer to the extent such net revenue was not included in (1) above.

(3) The estimated annual net revenue to be derived from any person, firm, association, private or municipal corporation under any executed contract for water or wastewater service, which net revenue was not included in any of the sources of net revenue described in this subsection (D).

(4) The estimated annual net revenue to be derived from the operation of any additions or improvements to or extensions of the Utility 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 subsection (D).

(5) The estimated annual net revenue to be derived from the operation of any additions and improvements to or extensions of the Utility being paid for out of the proceeds of sale of such Bonds being issued.

In the event the Utility will not derive any revenue as a result of the construction of the additions, improvements or extensions being or to be made to the Facilities within the provisions of subparagraphs (4) and (5) immediately above, the estimated normal Operating Expenses of such additions, improvements and extensions shall be deducted from estimated annual net revenue.

The words "historical net revenue" or "net revenue" as used in this subsection (D) 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 "historical net revenue" or "net revenue" shall be adjusted to reflect

the water and wastewater rates and charges effective on the date of such certificate if there has been any change in such rates and charges during or after such 12-consecutive-month period.

\* **Section 8. Refunding Bonds.** The City, by means of a Series Ordinance adopted in compliance with the provisions of Section 6, may issue refunding Bonds hereunder as follows:

(A) Bonds may be issued at any time for the purpose of refunding (including by purchase) Bonds or Senior Lien Obligations, including amounts to pay principal thereof and redemption premium, if any, and interest thereon to the date of redemption (or purchase) and the expenses of issuing such Bonds to purchase or refund the same and of effecting such refunding upon delivery of a certificate as provided in Section 7. Such refunding Bonds also may be issued without a certificate if the Maximum Annual Debt Service on all Bonds and Senior Lien Obligations to be Outstanding after the issuance of the refunding Bonds shall not be greater than the Maximum Annual Debt Service were such refunding not to occur.

(B) Bonds may be issued at any time for the purpose of refunding (including by purchase) any other utility revenue bonds of the City, including amounts to pay principal thereof and redemption premium, if any, and interest thereon to the date of redemption of such bonds (or purchase) and the expenses of issuing the Bonds to purchase or refund the same and of effecting such refunding; provided, however, that prior to the issuance of such Bonds the City must provide a certificate as provided in Section 6.

(C) Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity, any Bonds for the payment of which sufficient Net Revenues or other moneys are not available, without a certificate under Section 6.

\* **Section 9. Specific Covenants.** The City hereby makes the following covenants with Bondowners for as long as any Bonds remain Outstanding.

(A) Rate Covenant. The City will at all times establish, maintain and collect rentals, tariffs, rates, fees, and charges in the operation of all of the business of the Utility for as long as any Bonds are Outstanding that will produce Net Revenues in each Fiscal Year at least equal to the greater of:

(i) 100% of the amounts required in such Fiscal Year to be paid as Debt Service on Outstanding Bonds and Senior Lien Obligations, or

(ii) amounts required to be deposited during such Fiscal Year from Net Revenues into bond funds and reserve funds established for Outstanding Bonds and Senior Lien Obligations, but excluding from each of the foregoing payments made from refunding debt and capitalized Debt Service.

The City hereby covenants that it will not construct, operate or enter into any agreement permitting or facilitating the construction or operation of any Special Facilities or any other properties which will compete with the operations of the Utility in a manner which will materially and adversely affect its ability to comply with the covenant set forth in this subsection (A). Compliance with the covenant set forth in the preceding sentence may be demonstrated by a certificate based upon reasonable belief of the Designated City Representative.

If the Net Revenues in any Fiscal Year are 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 upon receiving such recommendations or giving reasonable opportunity for such recommendations to be made, the City, on the basis of such recommendations and other available information, will establish such rentals, tariffs, rates, fees and charges for Utility services and operations as are necessary to meet the Rate Covenant in the Fiscal Year during which such adjustments are made. If the City has taken the steps set forth in this paragraph and the Net Revenues in the Fiscal Year in which adjustments are made nevertheless are not sufficient to meet the Rate Covenant, there shall be no default under this Section 9(A) or Default under the provisions of Section 19(C) of this Master Ordinance during such Fiscal Year, unless the City fails to meet the Rate Covenant for two consecutive Fiscal Years.

(B) Maintenance and Repairs. The City will at all times maintain, preserve and keep the Utility'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 Utility 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 Utility 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 Utility Revenue Fund for any extensions or betterments which are not economically sound and which will not contribute to the operation of the Utility in an efficient and economical manner, unless such extensions are required by law or any regulatory body having valid jurisdiction.

(E) Accounting. The City will keep and maintain proper books and accounts with respect to the operation of the Utility in such manner as prescribed by any authorities having jurisdiction over the Utility 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 Bondowners. Said audits shall show whether or not the City has in all respects performed and complied with the covenants set forth in this Master Ordinance.

(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 Utility 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 Utility. The City will not sell, or otherwise dispose of, substantially all of the Facilities or other properties of the Utility 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 Utility to related or nonrelated entities, provided that if such properties constitute five percent or greater of the "book value" of the Utility's properties or generate five percent or greater of the Net Revenues of the Utility at the time of such sale or disposition, the Utility 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 Utility.

\* **Section 10. Supplemental Ordinances without Consent of Bondowners.** Subject to Section 12, The City may adopt at any time and from time to time and without the consent or concurrence of the owner of any Bonds, an ordinance or ordinances amendatory or supplemental to this Master Ordinance for any one or more of the following purposes:

(A) To provide for the issuance of a series of Bonds pursuant to Section 6, and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed;

(B) 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;

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

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

(E) To confirm as further assurance any pledge or provision for payment of the Bonds under, and the subjection to any lien, claim or pledge created or to be created by the provisions of, this Master Ordinance of the Net Revenues or of any other moneys, securities or funds;

(F) To cure any ambiguity or defect or inconsistent provision in this Master Ordinance or to insert such provisions clarifying matters or questions arising under this Master Ordinance as are necessary or desirable; provided that such modifications shall not materially and adversely affect the rights of any Bondowners;

(G) To modify the provisions of this Master Ordinance to obtain a rating on any series of Bonds or any portion thereof which is higher than the rating which would be assigned without such modification so long as the rating on any other series of Bonds or portion thereof is not adversely affected; or

(H) To modify any of the provisions of this Master Ordinance in any other respects; provided that such modifications shall not materially and adversely affect the rights of any Bondowners.

\* **Section 11. Supplemental Ordinances with Consent of Majority of Bonds Affected.** Subject to Section 12, and in addition to supplemental ordinances authorized by Section 10, the City may adopt at any time and from time to time an ordinance or ordinances amendatory or supplemental to this Master Ordinance or any Series Ordinance with written consent as provided in this Section 11 of the owners of not less than a majority in principal amount of the Outstanding Bonds whose contract with the City will be altered by such amendment. A copy of such ordinance (or summary thereof) together with a request to owners of all Bonds whose contract with the City will be altered by such ordinance for their consent thereto shall be mailed by the City to the owners of such series of Bonds, but failure to mail copies of such ordinance and request shall not affect the validity of the ordinance when consented to as provided in this Section 11. Such ordinance shall not be effective unless and until there shall have been filed with the City the written consents of the owners of a majority in aggregate principal amount of the Outstanding Bonds of the Series whose contract with the City will be altered by such ordinance and notices shall have been mailed as provided hereinafter in this Section 11. Any such consent shall be binding upon the owner of the Bonds of the series giving such consent and on every subsequent owner of such Bonds (whether or not such subsequent owner has notice thereof). A notice, stating the substance of the ordinance and stating that the ordinance has been consented to by the Owners of a majority in aggregate principal amount of the Bonds of the series whose contract with the City will be altered thereby and will be effective as provided in this Section 11, shall be given to the owners of the Bonds of the affected series by mailing such notice to such Bondowners. A record, consisting of the papers required by this Section 11 to be filed with the City, shall be proof of the matters therein stated, and the ordinance shall

be deemed conclusively to be binding upon the City, the Paying Agents and other agents, if any, for that series and the owners of all Bonds of that series, at the expiration of 30 days after the mailing of the notice last provided for in this Section.

\* **Section 12. Limitation on Power of Amendment.** Notwithstanding anything in Sections 10 or 11 to the contrary, without the specific consent of the owner of each Bond, no ordinance amending or supplementing the provisions hereof or of any Series Ordinance shall (1) permit the creation of a lien or charge on Net Revenues superior or prior to the payment of the Bonds; (2) reduce the percentage of Bonds, the owners of which are required to consent to any such ordinance amending or supplementing the provisions hereof or of any Series Ordinance; or (3) give to any Bond or Bonds any preference over any other Bond or Bonds secured hereby. No ordinance amending or supplementing the provisions hereof or of any Series Ordinance shall change the date of payment of the principal of any Bond, or reduce the principal amount of any Bond, or change the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption or prepayment thereof, or advance the date upon which any Bond may first be called for redemption prior to its fixed maturity date (except as provided in the Series Ordinance authorizing the issuance of such Bond) without the specific consent of the owner of that Bond; and no such amendment shall change or modify any of the rights or obligations of any Paying Agent or other agent for a series of Bonds without its written assent thereto.

\* **Section 13. Amendment of Ordinance in any Respect by Approval of All Bondowners of a Series.** Notwithstanding anything contained in Sections 10 through 12, the rights and obligations of the City and of the owners of the Bonds of any series, and the terms and provisions of the Bonds of any series and of this Master Ordinance and of any Series Ordinance, may be amended in any respect, upon the adoption of an ordinance by the City and the consent of the owners of all of the Outstanding Bonds of the series whose contract with the City will be altered by such amendment, such consent to be given as provided in Section 11, except that no notice to Bondowners shall be required, and the amendment shall be effective immediately upon such written consent of all such owners of Bonds.

\* **Section 14. Notice to Bondowners.** Except as otherwise specifically provided in this Master Ordinance, any provision in this Master Ordinance for the mailing of a notice or other paper to owners of Bonds of any series shall be fully complied with if it is mailed by first class mail, postage prepaid, to each registered owner of any of the Bonds of that series then Outstanding at his address, if any, appearing upon the registration books maintained by or on behalf of the City.

\* **Section 15. Execution of Instruments by Bondowners.** Any request, direction, consent, revocation of consent, approval, objection or other instrument in writing required or permitted by this Master Ordinance to be signed or executed by Bondowners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondowners in person or by an agent duly appointed by an instrument in writing. Proof of the execution of any such instrument shall be

sufficient for any purpose of this Master Ordinance, if made in the following manner: the fact and date of the execution by any person of any such instrument may be proved 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 his authority. 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 16. Endorsement of Amendment on Bonds.** Bonds of any series delivered after the effective date of any action amending this Master Ordinance or the Series Ordinance with respect to that series taken as hereinabove provided may bear a notation by endorsement or otherwise in form approved by the City as to such action, and in that case, upon demand of the owner of any Outstanding Bond of that series at such effective date and presentation of his Bond for such purpose at the principal office of the Registrar therefore, suitable notation shall be made on such Bond by the Registrar as to any such action. If the City shall so determine, new Bonds of such series, so modified as in the opinion of the City and its bond counsel to conform to such Bondowners' action, shall be prepared, delivered and upon demand of the owner of any Bond of that series then Outstanding shall be exchanged without cost to such Bondowner for Bonds of that series then Outstanding hereunder, upon surrender of such Bonds.

\* **Section 17. Ordinances a Contract with Bondowners.** In consideration of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, the provisions of this Master Ordinance and of any Series Ordinance shall constitute a contract with the owner or 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 owners of any and all of the Bonds.

\* **Section 18. Moneys Held by Paying Agents One Year After Due Date.** Unless otherwise provided in the Series Ordinance authorizing a series of Bonds, moneys or securities held by the Paying Agents in trust for the payment and discharge or purchase of any of the Bonds of a series which remain unclaimed for one year after the date when such Bonds are purchased or shall have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by such Paying Agents at such date, or for one year after the date of deposit of such moneys if deposited with the Paying Agents after the date when such Bonds become due and payable, shall be repaid by the Paying Agents to the City free from the trust created by this Master Ordinance and the Paying Agents shall thereupon be released and discharged with respect thereto, and the owners of the Bonds of the series payable



from such moneys shall look only to the City for the payment of such Bonds or the purchase price thereof.

\* **Section 19. Defaults and Remedies.** The City hereby finds and determines that the continuous operation of the Facilities and the collection, deposit and disbursement of Gross Revenue are essential to the payment and security of the Bonds and the failure or refusal of the City or any of its officers to perform the covenants and obligations of this Master Ordinance will endanger the operation of the Facilities and the application of Gross Revenue and such other moneys, funds and securities to the purposes herein set forth. Accordingly, the provisions of this Section are specified and adopted for the additional protection of the owners from time to time of the Bonds. Any one or more of the following events shall constitute a "Default" under this Master Ordinance:

(A) The City shall fail to make payment of the principal of any Bonds when the same shall become due and payable whether by maturity or scheduled redemption prior to maturity;

(B) The City shall fail to make payments of any installment of interest on any Bonds when the same shall become due and payable; or

(C) The City shall default in the observance or performance of any other covenants, conditions, or agreements on the part of the City contained in this Master Ordinance, and such default shall have continued for a period of 90 days; provided, however, that such default shall not constitute a Default unless the owners of at least a majority of the principal amount of Outstanding Bonds have requested a Bondowners' Trustee to declare such default as a Default.

In such case, so long as such Default shall not have been remedied, a Bondowners' Trustee may be appointed for the Bonds of any series by the owners of a majority in principal amount of the Bonds of such series by an instrument or concurrent instruments in writing signed and acknowledged by such Bondowners or by their attorneys-in-fact duly authorized and delivered to such Trustee, notification thereof being given to the City. Any Bondowners' Trustee appointed under the provision of this Section shall be a bank or trust company organized under the laws of any state or a national banking association. The fees and expenses of a Bondowners' Trustee shall be borne by the Bondowners and not by the City. The bank or trust company acting as a Bondowners' Trustee may be removed at any time, and a successor Bondowners' Trustee may be appointed by the owners of a majority in principal amount of the Bonds Outstanding of the applicable series, by an instrument or concurrent instruments in writing signed and acknowledged by such Bondowners or by their attorneys-in-fact duly authorized.

The Bondowners' Trustee appointed in the manner herein provided, and each successor thereto, is hereby declared to be a trustee for the owners of all the Bonds of

the series for which such appointment is made and is empowered to exercise all the rights and powers herein conferred on the Bondowners' Trustee.

A Bondowners' Trustee may, upon the happening of a Default and during the continuance thereof, take such steps and institute such suits, actions or other proceedings in its own name, or as trustee, all as it may deem appropriate for the protection and enforcement of the rights of Bondowners 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.

Any action, suit or other proceedings instituted by a Bondowners' Trustee hereunder shall be brought in its name as trustee for the Bondowners and all such rights of action upon or under any of the Bonds or the provisions of this Master Ordinance or applicable Series Ordinance may be enforced by a Bondowners' Trustee without the possession of any of said Bonds, and without the production of the same at any trial or proceedings relating thereto except where otherwise required by law, and the respective owners of said Bonds by taking and holding the same, shall be conclusively deemed irrevocably to appoint a Bondowners' Trustee the true and lawful trustee to the respective owners of said Bonds, with authority to institute any such action, suit or proceedings; to receive as trustee and deposit in trust any sums that become distributable on account of said Bonds; to execute any paper or documents for the receipt of such moneys, and to do all acts with respect thereto that the Bondowner himself might have done in person. Nothing herein contained shall be deemed to authorize or empower any Bondowners' Trustee to consent to accept or adopt, on behalf of any owner of said Bonds, any plan of reorganization or adjustment affecting the said Bond or any right of any owner thereof, or to authorize or empower the Bondowners' Trustee to vote the claims of the owners thereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceedings as to which the City shall be a party.

No owner of any one or more of the Bonds shall have any right to institute any action, suit or proceedings at law or in equity for the enforcement of the same, unless Default shall have happened and be continuing, and unless no Bondowners' Trustee has been appointed for such series as herein provided, but any remedy herein authorized to be exercised by a Bondowners' Trustee may be exercised individually by any Bondowner, in his own name and on his own behalf or for the benefit of all Bondowners, in the event no Bondowners' Trustee has been appointed, or with the consent of the Bondowners' Trustee if such Bondowners' Trustee has been appointed; provided, however, that nothing in this Master Ordinance, any Series Ordinance or in the Bond shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from Net Revenues the principal of and interest on said Bonds to the respective owners thereof at the respective due dates therein specified, or affect or impair the right of action, which is absolute and unconditional, of such owners to enforce such payments.

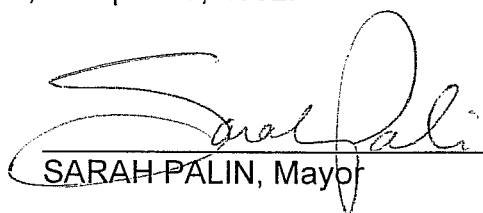
The remedies herein conferred upon or reserved to the owners of the Bonds and to a Bondowners' Trustee are not intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The privileges herein granted shall be exercised from time to time and continued so long as and as often as the occasion therefore may arise and no waiver of any default thereunder or under any Series Ordinance, whether by a Bondowners' Trustee or by the owners of Bonds, shall extend to or shall affect any subsequent default or shall impair any rights or remedies consequent thereon. No delay or omission of the Bondowners or of a Bondowners' Trustee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

Upon any such waiver, such default shall cease to exist, and any Default arising therefrom shall be deemed to have been cured, for every purpose of this Master Ordinance; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

\* **Section 20. 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 21. Effective Date.** This ordinance shall take effect upon passage and approval.

ADOPTED by the Wasilla City Council, Alaska, on April 29, 2002.



SARAH PALIN, Mayor

ATTEST:



KRISTIE L. SMITHERS, CMC  
City Clerk

[SEAL]



**CITY OF WASILLA**  
290 E. HERNING AVE.  
WASILLA, AK 99654-7091  
PHONE: (907) 373-9090  
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TO: Wasilla City Council

THRU: Mayor Sarah Palin *SP*

FROM: Public Works

DATE: April 18, 2002

**SUBJECT: Ordinance Serial No. 02-24**

**SUMMARY:** Ordinance Serial No. 02-24 has been prepared by the City attorney to authorize utility revenue bonds, to establish a lien structure against the City's water and sewer revenues for construction loans, and to establish covenants for the bonds.

The utility revenue bonds will be used to repay water and sewer loans. The lien structure establishes a priority for the earlier loan agreements. The bond covenants provide an agreement by which the bonds will be executed and a means to protect bondowners.

The City currently has loans with the Alaska Department of Environmental Conservation as a partial funding source for the construction of the Knik-Goose Bay Water main extension, the Palmer-Wasilla Highway water and sewer main extensions, the Lucille Street water and sewer main extensions, and the West Parks Highway water main extension. The City has also received a loan commitment from USDA Rural Utilities to construct the Bumpus well and reservoir facility.

FISCAL IMPACT: None

**RECOMMENDED ACTION:** Council is requested to adopt Ordinance Serial No. 02-24 that authorizes utility revenue bonds, that establishes a lien structure against the City's water and sewer revenues for construction loans, and establishes covenants for the bonds.