

Preston|Gates|Ellis LLP**FAX COVER SHEET**

TO:	COMPANY:	FAX NO:	CONF. NO:
Mr. Glen Thompson	Ketchikan Charter Commission	(907) 247-5561	(907) 723-0700
Mr. Steven H. Schweppe	City of Ketchikan	(907) 247-2111	(907) 225-3111
Mr. Robert E. Newell, Jr.	City of Ketchikan	(907) 228-5617	(907) 228-5621
Mr. Scott Brandt-Erichsen	Ketchikan Gateway Borough	(907) 247-6625	(907) 228-6635
Mr. Mike Houts	Ketchikan Gateway Borough	(907) 247-6625	(907) 228-6642

FROM David O. Thompson

RE: #96000-40000

DATE: May 13, 2005

TOTAL NUMBER OF PAGES INCLUDING THIS COVER

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Glen:

I plan on giving you complete comments on aspects of the proposed charter relating to borrowing. First, however, I'll provide comments on the two agenda statements you sent me. Attached is the agenda statement relating to the proposed revision to Section 11.04. (I'll send you a separate discussion of the more complicated agenda statement regarding Section 11.05.)

I agree that the reference to refunding in this section conflicts with Section 11.01(d) and should be removed. In addition, the reference to Section 11.03 should probably also be deleted. That provision is for a short-term borrowing that, like a refunding, would not require a vote.

Here, as in a couple of other spots, the word "therefor" has been changed (probably by a spell check program) to "therefore." "Therefor" is one of those words (only used by bond lawyers!) that can be correct where, as here, it refers to evidences of indebtedness for borrowed money. It does not mean "as a result" or "consequently" (i.e. it doesn't mean "therefore").

cc: Scott Brandt-Erichsen
Mike Houts
Bob Newell
Steve Schweppe

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KETCHIKAN CHARTER COMMISSION

AGENDA STATEMENT

NO. H-4

MEETING OF March 25, 2005

ITEM TITLE

Amend Article XI, Section 11.04: Revenue Bonds and Borrowing (Second Reading)

SUBMITTED BY Glen Thompson

SUMMARY STATEMENT

In the City's Brief, it says that there may be an error or conflict in Sections 11.01 and 11.04. "If the City's interpretation of these two sections is correct, a vote would be required before revenue bonds could be refunded. Any such requirement needs to be eliminated from the Charter. Refunds are undertaken to take advantage of favorable market conditions; i.e. lower interest rates. If a vote is required, it will be difficult, if not impossible; to refund bonds because market conditions change rapidly and quite often the window of opportunity is very limited. The City's Bond counsel has reviewed this issue and concurs with staff's assessment."

Section 11.04 states, in part: "but only when authorized by the Assembly and ratified by the voters for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise, for refunding or for purposes authorized by Section 11.03 of this Charter."

This motion was approved at the Commission meeting of 3/11/05 and should the second reading be approved, the Charter will be modified to reflect the change.

RECOMMENDED ACTION:

"I move to amend Article XI, Section 11.04 by deleting the words "for refunding" in the second reading."

This Charter section would read, in its entirety:

Section 11.04 Revenue Bonds and Borrowing.

The Municipality shall have power to borrow money and to issue revenue bonds or other such evidences of indebtedness therefore, the principal and interest of which are payable solely out of, and the only security of which is, the revenues of a revenue-producing municipal utility or enterprise; but only when authorized by the Assembly and ratified by the voters for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise, ~~(for refunding) or for purposes authorized by Section 11.03 of this Charter.~~ Bond anticipation notes may be issued following the ratification of a bond issue and

*Vote requirement
conflicts with
Section 11.03*

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Mr. Mike Houts	Ketchikan Gateway Borough	(907) 247-6625	(907) 228-6642

FROM David O. Thompson

RE: #96000-40000

DATE: May 17, 2005

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Glen:

Attached is a memorandum summarizing my comments on the agenda statement relating to Section 11.05 of the proposed charter.

As the attached memorandum indicates, I am working on a set of comprehensive comments on provisions throughout the proposed charter that relate to debt and borrowing. I hope to finish that memorandum later today or tomorrow and send it to you as soon as possible.

Please let me know if you have questions about any of the observations included in the attached memorandum.

cc: Scott Brandt-Erichsen
Mike Houts
Bob Newell
Steve Schweppe

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Preston|Gates|Ellis LLP**MEMORANDUM**

TO: Glen Thompson

FROM: David O. Thompson *DT*

DATE: May 17, 2005

SUBJECT: Section 11.05 of Proposed Charter for Consolidated Ketchikan Borough – Economic Development Financing

This memorandum discusses several aspects of the agenda statement for the April 22, 2005 meeting of the Charter Commission regarding Section 11.05 of the proposed charter.

Requiring a Vote for "Double-Barreled" Bonds

I'll start by discussing the first of "two courses of action" that were to be decided upon by the Commission, since this really involves provisions of Article XI other than Section 11.05:

- (a) Should the Utility (KPU) be required to gain voter approval prior to issuance of general obligation bonds for improvement or upgrades of the utilities? If the answer is "no," then insert the following as the next to the last sentence in Section 11.01 (c).

"General obligation bonds issued under this section, which are to be used for capital improvement in, and paid for by revenues of Ketchikan Public Utilities may be issued without ratification at an election."

Section 9.9 of the Alaska Constitution requires a vote for general obligation debt, and that requirement would apply to "double barreled" bonds, i.e. bonds that are secured by both a pledge of taxes and a pledge of revenues. So the charter cannot exempt this type of general obligation from the requirement for voter approval. (In any case, if the Charter Commission decides that revenue bonds must be voted, there would need to be a vote anyway.)

Revenue Bonds and "Non-Recourse" Revenue Bonds

There is some confusion in the discussion set forth in the agenda statement about the terms "revenue bonds" and "non-recourse revenue bonds."

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The term "revenue bonds" is generally used for bonds payable from "the revenues of a revenue-producing municipal utility or enterprise," to use the language of Section 11.04 of the proposed charter (my emphasis). I emphasize the word "municipal" because these are bonds issued by a municipality for its own projects. Revenue bonds are distinguished from general obligation bonds in that they are not payable from the general fund, but from a designated enterprise fund. For example, municipalities can issue revenue bonds payable from revenues of publicly owned water, sewer and storm water systems, ports, airports, and electric utilities.

The City of Ketchikan issues revenue bonds secured by KPU revenues, i.e. the revenues of its electric, sewer and telephone utilities, which are combined for borrowing purpose. Ketchikan Gateway Borough has issued revenue bonds secured by airport revenues. None of these bonds could be described as "nonrecourse revenue bonds," because they are all secured by a pledge of municipal revenues. In other words, bondholders may be said to have "recourse" to assets of the applicable municipal enterprise fund if there were ever a default in the payment of such revenue bonds.

"Nonrecourse revenue bonds" are bonds that pledge no municipal revenues or assets, but pledge instead a third party's assets or promise to pay. The type of bonds authorized by proposed Charter Section 11.05, for example, "shall not be payable from or secured by, any municipal assets, tax funds, or governmental revenue, or by all or part of the faith and credit of the Municipality" (Section 11.05(b)). So in no event could KPU bonds or airport revenue bonds (of the type issued by the City of Ketchikan or Ketchikan Gateway Borough) be designated as "nonrecourse revenue bonds" under Section 11.05. The port revenue bonds being considered by the City also are "recourse" bonds, because the City is planning to pledge port revenues, including passenger wharfage fees, to the payment of those bonds.

"Nonrecourse revenue bonds" of the type authorized by proposed Section 11.05 are sometimes called "conduit bonds," "industrial revenue bonds," or "private activity bonds," because they are bonds issued by a municipality for the benefit of a third party and payable only from the assets pledged by that third party, not from any assets of the municipality. The general state law authority for such bonds is set forth in AS 29.47.390. Bonds of this type have been issued by Alaska municipalities to make loans to hospitals, private companies, and other borrowers whose projects qualify under the provisions of AS 29.47.390(d)(2). This statute is clear and simple, and the Charter Commission may wish to consider relying on this generally applicable state law for "conduit financing" authority rather than including Section 11.05 in the charter. (I will nonetheless make some suggestions for revising Section 11.05 in a separate memo that reviews and comments on a number of charter provisions.)

Should a Vote be Required for Revenue Bonds?

As you know, Alaska law does not require a vote for revenue bonds. That's why Ketchikan Gateway Borough has not held an election for revenue bonds it has issued. Of course, the City's charter does require a vote for revenue bonds.

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It is entirely a policy judgment whether to require voter approval for revenue bonds. Around the country, it is a bit unusual to find requirements for voter approval of revenue bonds, but several Alaska municipalities in addition to the City of Ketchikan include in their charters such requirements for voter approval of revenue bonds, including Fairbanks, Petersburg and Wrangell.

I don't think distinguishing "utilities" from "non-utilities" in a requirement for voter approval would be clear enough. Those terms are not precise. In conventional governmental accounting, any revenue bond is payable from an "enterprise" fund. It would be clearer to identify precisely which governmental enterprises are subject to voter approval for borrowing and which are not. In other words, for example, a charter provision could specify that revenue obligations payable from sewer, port and electric revenues are subject to voter approval, while revenue obligations payable from airport and telephone revenues are not subject to voter approval. (I'm not suggesting that this is a good idea, just that this is how it could be done clearly.)

A dollar threshold could be considered for a vote on revenue bonds. In other words, revenue borrowing of, say, less than \$1,000,000 could perhaps be authorized by the Assembly without a vote of the people. Such a limit might need to be indexed to account for inflation. If the limit is low enough, it is unlikely to lead to abuse. In other words, it would be unwieldy to combine fifteen \$1,000,000 transactions in an attempt to avoid a public vote on a \$15,000,000 bond issue.

Should a Vote be Required for Nonrecourse Revenue Bonds?

I do not recall ever seeing a requirement that "conduit" or "private activity" bonds be approved by voters. Since no municipal revenues or assets are pledged for the payment of such bonds, perhaps no one has thought it made sense to require voter approval.

As I've indicated in my discussion of the term "nonrecourse," I think it would be impossible to characterize any conventional revenue bond -- a KPU bond or a port revenue bond, for example -- as a "nonrecourse" revenue bond and therefore use Section 11.05 as a way to evade the otherwise applicable requirement for voter approval in Section 11.04.

DOT:bg

cc: Scott Brandt-Erichsen
Mike Houts
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FROM David O. Thompson

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Glen:

Attached is a memorandum setting forth comments on certain provisions in Articles VIII, X and XI that relate to debt and bond financing.

Please let me know if you have questions about any of the comments included in the attached memorandum.

cc: Scott Brandt-Erichsen
Mike Houts
Bob Newell
Steve Schweppe

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Preston|Gates|Ellis LLP**MEMORANDUM**

TO: Glen Thompson

FROM: David O. Thompson *DT*

DATE: May 17, 2005

SUBJECT: Commentary on Proposed Charter Provisions relating to Debt and Bond Financing

Interpolated below are some specific questions and comments on certain provisions in Articles VIII, X, and XI relating to debt and bond financing:

ARTICLE VIII MUNICIPAL UTILITIES**Section 8.01 Municipal Utilities.**

The electric, telephone, and water services previously owned and operated by the City of Ketchikan d/b/a Ketchikan Public Utilities are municipal utilities and shall be operated in a business-like manner in accordance with this Article and other applicable provisions of this Charter provided, however, that the Assembly may, by ordinance, remove water service from the municipal utilities governed under this Article. **[I interpret this to mean that the Assembly could, by ordinance, separate water from the other two utilities, operating water on its own, but it could not sell the water system without a vote, as required by Section 8.03(g). Correct?] Except as limited by this Charter or by other applicable law, the Assembly may designate other utilities as municipal utilities to be operated in the same manner as the electric, telephone, and water utilities. Water service areas shall not be considered to be municipal utilities under this Article unless both terminated as provided for in Section 12.04(e) of this Charter and designated by the Assembly as municipal utilities. The Assembly may, under Section 12.06(b) of this Charter, delegate to the municipal utility the supervision of water service areas.**

Section 8.02 Management.

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(a) **Powers.** The Assembly shall exercise all powers necessary or convenient for the management, operation, regulation, and use of the municipal utilities unless, by ordinance, it creates a municipal utility board appointed by the mayor and confirmed by the Assembly and delegates to such board some or all such powers except those powers designated in (c) below.

(b) **General Manager.** The Assembly or municipal utility board may appoint a general manager who shall serve at the Assembly or board's pleasure. The general manager may be delegated such duties and responsibilities for the municipal utilities as the Assembly or board may determine.

(c) **Acts Requiring Assembly Approval.** The following acts may not be delegated by the Assembly and shall not become effective until approved by the Assembly:

(1) The adoption of capital and annual budgets in accordance with Section 8.03;

(2) The establishment and adjustment of utility rates and charges to customers, unless those rates and charges have been approved by or determined by a state or federal agency having jurisdiction. However, the Assembly may, by ordinance, authorize the general manager or a municipal utility board to establish and adjust rates and charges for goods and services for which a local competitive market exists; and to establish interim rates and charges to be effective until approved or rejected by the Assembly;

(3) The issuance of bonds, notes, or other evidence of indebtedness, any encumbrance of utility property, or the creation of any indebtedness; **[Okay—this is typical and does not conflict with any of the other borrowing provisions.]**

(4) The establishment and adjustment of salaries and benefits for utility board members and for employees of the utility who are not represented by a union.

The Assembly may, by ordinance, prescribe that some functions of the municipal utilities, such as finance, personnel, and legal, be provided in part or in whole by municipal departments or be otherwise shared. The Municipality shall be reasonably compensated by the municipal utilities for providing such services to the municipal utilities.

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Section 8.03 Utility Budget, Rates, and Borrowing.

(a) **Utility Budget.** The municipal utilities' fiscal year shall run concurrently with the Municipality's fiscal year. Not later than May 1 of each year, a budget for the next fiscal year shall be submitted to the Assembly. Such budget shall include a program of capital expenditures for the year. The budget shall contain detailed estimates of anticipated revenues and proposed expenditures for the year and shall be in such form and have such contents as the Assembly may require. Each Utility division (electric, telephone, and water) shall be financially described as a separate business entity prior to preparation of a consolidated financial statement. Any accounting transfers to other utility divisions or subsidiaries shall be specifically noted. Proposed expenditures shall not exceed total estimated revenues, including bond proceeds and reserves. Revenues, other than restricted bond proceeds, from any one of the municipal utilities may be used to pay the expenses of any other municipal utility. In the event that the Assembly does not approve a budget by the beginning of the fiscal year, the Assembly shall adopt an interim budget that maintains rates, expenditures, and appropriations at the same levels as provided in the previous year's budget. The interim budget shall remain in effect until an annual budget has been approved by the Assembly.

(b) **Use of Utility Assets.** Except as provided in this Article, none of the assets, income, or property of the municipal utilities shall be placed in the Municipality's general fund or used for any purpose other than for the municipal utilities unless reasonable compensation is received by the municipal utilities.

(c) **Lapse of Appropriations.** At the close of the fiscal year, an unencumbered appropriation shall lapse into the fund from which appropriated. An appropriation for capital improvements, or in connection with requirements of federal and state grants, shall not lapse until the purpose of the appropriation has been accomplished or abandoned.

(d) **Borrowing.** Except as otherwise provided in this subsection, the municipal utilities may borrow money and issue bonds or other evidences of indebtedness in the manner provided by Article XI. No borrowing and no issuance of bonds or other evidence of indebtedness for the municipal utilities shall occur unless approved by the Assembly and, to the extent required under Article XI, a majority of the qualified voters of the Municipality who vote on the question of approving the borrowing, bonds, or other evidences of indebtedness, [Okay—this is consistent with other borrowing provisions.]

(e) **Payment in Lieu of Taxes.** The Assembly may require the municipal utilities to annually pay to the Municipality an amount reasonably estimated to be not more

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than the amount that said utilities would pay in taxes, assessments, or charges if subject to all such taxes, assessments, or charges.

(f) **Audit.** An annual independent audit of all municipal utility accounts shall be performed as required by Section 10.14.

(g) **Sale of Municipal Utility.** The municipally owned electric, telephone, or water services may not be sold or leased [Is this limited to a sale or lease in whole? or would it apply to a sale or lease of part of a system? For example, would it take a vote to approve the lease of an insubstantial asset of one of the utilities? (Note, however, that covenants in revenue bond ordinances may further limit sale or lease of utility assets.)] except by authority of an ordinance approved or enacted at an election by an affirmative vote of a majority of the qualified voters of the Municipality who vote on the question of approving the ordinance.

ARTICLE X FINANCE

Section 10.01 Fiscal Year.

The fiscal year of the Municipality shall begin on the first day of July and shall end on the last day of June, unless otherwise provided by ordinance.

Section 10.02 Budget

(a) At least 60 days before the beginning of the fiscal year, the manager shall prepare and submit to the Assembly a proposed budget for the next fiscal year that shall contain detailed estimates of anticipated revenues and proposed expenditures for the year. Such budget shall include a program of capital expenditures for the year. The total of such proposed expenditures shall not exceed the total of anticipated revenues, including bond proceeds, and reserves. The budget shall be in such form and have such contents as the Assembly may require. The budget shall be approved as provided for in this Charter. The Assembly may adopt, by ordinance, a two-year budget.

(b) The budget and any budget message accompanying it shall be a public record in the office of the Municipal Clerk and shall be open to the public. Sufficient copies of the budget and any budget message shall be made for distribution to persons on request.

(c) The Assembly shall hold a public hearing on the proposed budget at least one week after notice of the time of the hearing has been published; and any interested

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person shall have an opportunity to be heard for or against the estimates or any item thereof. The Assembly may continue the hearing at later meetings.

(d) The Assembly may amend the budget and shall approve the budget, by ordinance or resolution, not later than the third day before the beginning of the fiscal year. If the Assembly fails to adopt the budget and make the appropriations on or before that day, the budget as submitted or as amended shall go into effect and be deemed to be finally adopted by the Assembly and the expenditures shall become the appropriations for the next fiscal year. The appropriations, when made by the Assembly by resolution or ordinance separate from the budget document, need not be in as great detail as the proposed expenditures in the budget.

(e) The budget shall include budgets for the general fund, and for other funds that are deemed to require formal budgeting.

Section 10.03 Supplemental and Emergency Appropriations

(a) If during any fiscal year there are available revenues received from sources not anticipated in the budget for that year or revenues received in excess of budget estimates, the Assembly by ordinance may make supplemental appropriations for the year up to the amount of the additional revenues.

(b) Upon declaration by the Assembly that a public emergency exists and describing the emergency in clear and specific terms, the Assembly may make emergency appropriations. Such appropriations may be made by resolution and shall be approved by a unanimous vote of all Assembly members present at a meeting attended by a quorum of Assembly members. If there are no available funds to meet such appropriations, the Assembly by resolution may authorize the issuance of emergency notes. These notes shall be paid not later than the last day of the fiscal year following that in which the emergency appropriation was made.

Section 10.04 Taxation: Powers.

The Municipality shall have all powers of taxation that home rule boroughs may have under the State constitution and law.

Section 10.05 Taxation: Sales and Use Taxes; Ratification of Sales or Use Tax Rate Increases.

(a) The Municipality may, by ordinance, levy sales or use taxes on an areawide basis, a nonareawide basis, and a service area basis.

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Section 10.06 Taxation: Assessment, Levy and Collection of Property Taxes -- Exemptions.

The Municipality shall provide for the annual assessment, levy, and collection of taxes on property. No exemptions from taxation except those expressly provided by law or ordinance shall be allowed.

Section 10.07 Property Tax Limit

The areawide property tax levy shall not exceed one (1%) percent (10 mills) of the assessed valuation of the property to be taxed. The voters may raise this limit by an affirmative vote of the majority of the voters participating in a special or regular election, but in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality. This section shall not in any way limit the ability of the Municipality to meet its bonded obligations ~~and in no event shall the property tax levy during a year exceed three percent (thirty mills) of the assessed value of the property in the Municipality.~~ **[As written, the last sentence is puzzling. Does the 3% limitation contradict the statement that this section will not limit the ability of the Municipality to meet its bonded obligations? That's why I suggest this revision.]**

Section 10.08 Taxation: Supermajority Requirement to Raise Taxes or Fees Limit

Any ordinance or resolution that will increase fees, sales tax levies or property tax levies on an areawide, nonareawide or service area basis shall require the affirmative vote of two-thirds (2/3) of the Assembly **[I couldn't find this supermajority requirement for fee increases in the City's current charter. If it is new, it will be a disclosure issue for the next issue of KPU bonds, but it would be okay.]** or be approved by a majority of the qualified voters who vote on the ordinance or resolution at a general or special election. If the increase in the rate of levy of the general sales tax, use tax or fee is limited to a service area or is nonareawide, the vote is limited to those qualified to vote in that area.

Section 10.09 Taxation: Private Interests in Public Property and Payments in Lieu of Taxation

(a) **Taxation of Private Interests.** Private leaseholds, contracts, or interests in land or property owned or held by the United States, the state, or its political subdivisions shall be taxable to the extent of the private interests.

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(b) **Port Payments in Lieu of Taxation.** The Assembly may require the municipally-owned port to annually pay to the Municipality a payment in lieu of taxes.

Section 10.10 Taxation: Assessment -- Equalization.

The taxable status of property shall, for purposes of property taxes, be determined as of the first day of January, or such other date as may hereafter be prescribed by law, which is called the assessment day. Values on the assessment rolls shall be determined by the full and true value according to the facts existing on the assessment day for the year for which the assessment is made, and no change in the status of property after that day shall be considered in determining its value. In determining such values, any standards of appraisal established by law or ordinance shall be followed. The Assembly, acting as the Board of Equalization, shall equalize valuations of property assessed; provided that the Assembly, by ordinance, may delegate this power to a board created by ordinance when not prohibited by law.

Section 10.11 Taxation: Lien on Real Property.

The Municipality shall have a first lien on all real property and personal property against which municipal taxes are assessed, for the taxes and any collection charges, penalties, and interest that may accumulate thereto; and the lien shall continue until the taxes and any such charges, penalties, and interest are paid.

Section 10.12 Taxation: Protection of Lien on Property.

The Municipality may protect its lien for taxes on real property by sale at tax sale, or by purchasing the real property at any tax sale or other public sale, or by direct negotiation with the owner, or in any other legal manner. Any such procedure shall be deemed to be for a public purpose. When the Municipality has acquired an interest in real property to protect a tax lien thereon, the owner of any interest in such real property may, within such time as provided by law, redeem the same by paying the delinquent municipal taxes and all accrued charges, penalties, and interest thereon, as provided by law or ordinance. After the Municipality has held any tax-delinquent real property for such time as required by law, it may hold the same for public use or may sell it as provided by state law.

Municipal taxes on personal property shall be a debt to the Municipality from the persons to whom they are assessed. If any person to whom such taxes are assessed fails or refuses to pay the taxes, such taxes and accrued charges, penalties, and interest may be collected by a personal action in the name of the Municipality against the person to whom assessed in a court of competent jurisdiction, or by distraint and

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sale of any personal property of the person assessed. Neither of the remedies herein given shall be exclusive of the other or of any remedy provided by law.

Section 10.13 Disbursements: Authority - Method.

Disbursements of municipal funds shall be made only in accordance with appropriations made as provided in this Charter, or, in case of funds which are not formally appropriated, then by authority granted by the Assembly or by the qualified voters of the Municipality. The Assembly shall prescribe the method or methods of disbursing municipal funds.

Section 10.14 Lapse of Appropriations.

At the close of the fiscal year, an unencumbered appropriation shall lapse into the fund from which appropriated. An appropriation for capital improvements, or in connection with requirements of federal or state grants, shall not lapse until the purpose of the appropriation has been accomplished or abandoned.

Section 10.15 Annual Audit.

The Assembly shall provide for an annual independent audit of all Municipality and municipal utility accounts. The audit shall be performed by a certified public accountant designated by the Assembly and shall be completed within 180 days following the close of the fiscal year.

Section 10.16 Deposit and Investments of Funds.

The Assembly shall regulate the deposit and investment of municipal funds, and shall determine what funds of the Municipality may be invested. Municipal funds may be invested only in the following: General-obligation bonds and other general-obligation evidences of indebtedness of the United States, of the State of Alaska, of other states of the United States, of this Municipality, and of other municipalities of this state; and such other securities as may be authorized by ordinance.

Section 10.17 Purchases and Sales.

The Assembly shall, by ordinance, establish procedures for purchases and sales. Such procedures may include procedures for competitive bidding to the extent and subject to such exceptions established by the Assembly.

Section 10.18 Public Improvements.

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Public improvements, including local improvements, may be made by the municipal government itself or by contract. Except as provided in Section 8.02(a) or as otherwise provided by law, the Assembly shall award all contracts for such improvements; provided that the Assembly may, by ordinance, authorize the municipal manager or other authority to award such contracts not exceeding an amount to be determined by the Assembly and subject to such regulations as the Assembly may, by ordinance, prescribe. The Assembly may, by ordinance, establish regulations and procedures for competitive bidding or solicitations of quotations and awards of contracts and providing for rejection of all bids, bid protests, and project claims.

ARTICLE XI – BORROWING

Section 11.01 General-Obligation Bonds, and Revenue Bonds.

(a) **Power to Borrow.** The Municipality shall have power to borrow money and to issue its general-obligation bonds, revenue bonds, or other such evidences of indebtedness therefore, but only when authorized by the Assembly for capital improvements and ratified at an election by a majority of those qualified to vote and voting on the question.

(b) **Areawide, Nonareawide, and Service Area Indebtedness.** The Municipality may incur indebtedness:

- (1) On an areawide basis when exercising powers on an areawide basis;
- (2) On a service area basis when exercising powers through a service area;
- (3) On a nonareawide basis when exercising powers on a nonareawide basis.

Indebtedness incurred on a service area basis shall be repaid from revenues and taxes received from the service area and indebtedness incurred on a nonareawide basis shall be repaid from revenues and taxes received from the affected area. The full faith and credit of the Municipality may, however, be pledged to guarantee repayment of indebtedness incurred on a service area basis or on a nonareawide basis if the indebtedness has been approved as required by this subsection. If the indebtedness is incurred for the exercise of areawide powers, the election approving the indebtedness shall be areawide. If the indebtedness is incurred on a service area basis and is to be repaid solely from revenues and taxes received from the service area, the election approving the indebtedness shall be among the voters of the service area. If the indebtedness is incurred on a nonareawide basis and is to be repaid solely from revenues and taxes received from the affected area, the election approving the indebtedness shall be among the voters of the affected area. If the full faith and credit

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of the entire Municipality is pledged for the payment of indebtedness incurred on a service area or nonareawide basis, then the indebtedness must be approved on an areawide and on a service area or nonareawide basis. [Does this mean that there must be a majority approving the proposition in the service area and areawide?].

(c) General-obligation evidences of Indebtedness may also be secured by revenues from a revenue-producing utility or enterprise when they are issued for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise, and/or by other designated funds or revenues specifically pledged for payment of principal and interest thereon. Capital improvements as used hereinabove may also include a part of all of the Municipality's share of the cost of public improvement of which a part is to be paid by benefitted property. Bond anticipation notes may be issued following bond issue approval, and pending sale of the bonds.

(d) The requirement for ratification does not apply to borrowing money to meet appropriations for a particular fiscal year, nor to indebtedness to be paid from special assessments to be made on benefitted property, nor to refunding indebtedness.

Section 11.02 Notice of Bond Indebtedness.

(a) Before holding any election required by this article, the Assembly shall cause a notice of bond indebtedness to be published once a week for three consecutive weeks in a newspaper of general circulation in the Municipality. The first publication shall be at least twenty (20) days prior to the date of election. For elections approving the issuance of general-obligation bonds or revenue bonds the notice shall contain the following information:

- (1) The amount of the bonds, purposes of issuance, and length of time within which the bonds shall mature;
- (2) The amount of the estimated annual debt service on the proposed bonds based upon an estimate of the anticipated interest rate;
- (3) The amount of the current total general obligation indebtedness of the Municipality including authorized but unsold bonds;
- (4) The amount of the current year's debt service on the outstanding bonds of the Municipality;
- (5) The current total assessed valuation within the Municipality.

(b) For bonds secured by a pledge of taxes to be levied in a service area or on a non-areawide basis, the notice shall also contain the information required in (3), (4), and (5) relative to the service area or other area. Instead of the information required

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in (3) and (4), for revenue bonds that are not also secured by a general obligation pledge secured by a pledge of the municipal utilities' revenues, the notice shall contain the amount of current indebtedness secured by the applicable revenues, including authorized but unsold bonds, and the amount of the current year's debt service on outstanding bonds of the Municipality secured by a pledge of the applicable revenue information required in (3) and (4) relative to the affected municipal utilities.

(c) Omissions of information required by (2), (3), and (4) or errors in such information shall not invalidate any election.

Section 11.03 Borrowing to Meet Appropriations.

The Municipality shall have power to borrow money to meet appropriations for any fiscal year in anticipation of the collection of revenues for that year, when authorized by the Assembly, and without submitting the question to the voters. The total of such indebtedness shall never exceed 25% of anticipated revenues of that year. All debts so contracted shall be paid before the end of the next fiscal year.

Section 11.04 Revenue Bonds and Borrowing.

The Municipality shall have power to borrow money and to issue revenue bonds or other such evidences of indebtedness therefore, the principal and interest of which are payable solely out of, and the only security of which is, the revenues of a revenue-producing municipal utility or enterprise; but only when authorized by the Assembly and ratified by the voters for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise, ~~for refunding or for purposes authorized by Section 11.03 of this Charter~~ [Requiring a vote in these instances conflicts with provisions of Sections 11.01(d) and 11.03.] Bond anticipation notes may be issued following the ratification of a bond issue and pending sale of the bonds.

Section 11.05 Economic Development Financing.

The Municipality may enact ordinances authorizing the issuance of non-recourse revenue bonds or other non-recourse revenue obligations and the application of the proceeds thereof for economic development purposes, subject to the following limitations:

(a) Non-recourse revenue bonds and other non-recourse revenue obligations issued pursuant to this section shall be secured and payable only from any source except revenues, including tax revenue, of the Municipality ~~money or other property received as~~

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~~a result of projects financed by the non-recourse revenue bonds, or other non-recourse revenue obligations, and from money or other property received from private sources~~
[This tracks the language of AS 29.47.390(a) and avoids the implication that a project of the Municipality may be financed by such a bond].

(b) Non-recourse revenue bonds and other non-recourse revenue obligations issued pursuant this section shall not be payable from, or secured by, any municipal assets, tax funds, or governmental revenue, or by all or part of the faith and credit of the Municipality.

(c) Non-recourse revenue bonds or other non-recourse revenue obligations may only be used to finance economic development projects, as defined by ordinance. **[Note: "economic development projects" can probably be defined broadly, but would hospitals, private schools or other projects for 501(c)(3) entities qualify as "economic development"? They are among the most common recipients of conduit financing in some jurisdictions. Note also that any definition of this term by ordinance would be limited by the constitutional requirement that such projects have a "public purpose," though Alaska courts have also interpreted that broadly.]**

The restrictions of Articles VIII, X, and XI of this Charter shall not be construed as limitations upon the authority granted by this section. Non-recourse bonds and other non-recourse revenue obligations may be issued pursuant to this section without voter ratification at an election.

Section 11.06 Unexpended and Unencumbered Balances.

Every bond or other evidence of indebtedness shall contain a statement of the purpose for which it is issued, and the proceeds thereof shall not be used for any other purpose, except that, whenever any proceeds of an issue remain unexpended and unencumbered for the purpose for which issued, the Assembly shall authorize the use of such unexpended and unencumbered funds only for the following purposes, which are listed in descending order of priority:

- (a) For the retirement of such issue;
- (b) If such issue has been fully retired, then for the retirement of other bonds or obligations issued on the same areawide, service area, or nonareawide basis;
- (c) If there are no such other bonds or obligations of the Assembly outstanding, then for any purpose related to the same areawide, service area, or nonareawide purpose.

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Section 11.07 Voiding Authorization of Bonds.

The Assembly, by resolution or ordinance, may void the authorization of any unsold bonds or other evidences of indebtedness at any time. Every obligation shall be sold within the ten years following the adoption of the ordinance authorizing its issuance or the ratification of such issuance by the qualified voters of the Municipality, whichever is later, except when such sale has been delayed by an action to determine the validity of the proceedings authorizing the issuance of such obligations, in which case the period of such delay may be added to the said ten years. Authorization of obligations not sold within the time limits provided shall lapse unless otherwise voided at an earlier date by the Assembly.

Section 11.08 Assembly to Have Power to Regulate.

The Assembly shall have power to regulate the indebtedness of the Municipality and the issuance of bonds and other evidences of indebtedness, regardless of type or purpose, including general-obligation, revenue, special-assessment, refunding, and other, subject only to the limitations imposed by the state constitution and law and this Charter.

You may wish to consider adding something like the following, which is modeled on a provision in the charter of the City and Borough of Sitka (and is similar to a provision in the charter of the City of Petersburg):

Section 11.09 Challenges to Bond Authorizations.

Notwithstanding any provision of this charter to the contrary, no action challenging the authority or proceedings for or the validity of, the issuance of any bonds (or other obligations), a bond ratification election, or the authorization of taxes to pay any bond (or other obligation), may be commenced or maintained unless instituted within 30 days from the date of certification of the results of a bond ratification election or from the date of passage of the ordinance or resolution authorizing the issuance of any bonds (or other obligations) when a bond ratification election has been obtained or is not required.

DOT:bg

cc: Scott Brandt-Erichsen
Mike Houts
Bob Newell
Steve Schweppe