

NONCODE ORDINANCE

Sponsored By: Borough Manager
Introduced: 01/07/25
Public Hearing: 01/21/25
Adopted: 01/21/25

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 25-009**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING THE ISSUANCE OF STATE OF ALASKA LEASE REVENUE REFUNDING BONDS, SERIES 2025 (GOOSE CREEK CORRECTIONAL CENTER PROJECT), IN ONE OR MORE SERIES, IN AN AMOUNT NOT TO EXCEED \$110 MILLION; APPROVING THE FORM AND SUBSTANCE OF AN OFFER TO PURCHASE, A DEALER MANAGER AGREEMENT, A THIRD SUPPLEMENT TO TRUST INDENTURE, A FOURTH SUPPLEMENT TO TRUST INDENTURE, A FOURTH AMENDMENT TO LEASE PURCHASE AGREEMENT, A FIFTH AMENDMENT TO LEASE PURCHASE AGREEMENT, ONE OR MORE CONTINUING DISCLOSURE CERTIFICATES, ONE OR MORE BOND PURCHASE AGREEMENTS, AND A REFUNDING TRUST AGREEMENT; AUTHORIZING OFFERING DOCUMENTS; MAKING CERTAIN FINDINGS AND DETERMINATIONS; AUTHORIZING THE SELECTION AND ENGAGEMENT OF A DEALER MANAGER AND ONE OR MORE UNDERWRITERS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO ACCOMPLISH THE FOREGOING; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

WHEREAS, the Borough has issued its State of Alaska Lease Revenue Bonds, Series 2008 (Goose Creek Correctional Center Project) in an aggregate principal amount of \$244,285,000 (the "Series 2008 Bonds") pursuant to a Trust Indenture dated as of December 1, 2008 (the "Original Indenture"), between the Borough and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), to finance the construction of the Goose Creek Correctional Facility; and

WHEREAS, the Borough has issued its State of Alaska Lease Revenue Refunding Bonds, Series 2015 (Goose Creek Correctional Center Project) in an aggregate principal amount of \$105,720,000 (the "Series 2015 Bonds") pursuant to the Original Indenture, as amended by the First Supplement thereto dated as of April 15, 2015, to refund a portion of the then-outstanding Series 2008 Bonds; and

WHEREAS, pursuant to the Original Indenture, as amended by the First Supplement thereto, the Borough reserved the right to purchase Series 2015 Bonds on the open market and deliver such Series 2015 Bonds to the Trustee for cancellation at any time and for any reason; and

WHEREAS, pursuant to the Original Indenture, as amended by the First Supplement thereto, the Series 2015 Bonds maturing on or after September 1, 2026 (the "Refundable Series 2015 Bonds"), are subject to redemption at the option of the Borough in whole or in part on any date on or after September 1, 2025, at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date; and

WHEREAS, the Refundable Series 2015 Bonds remain outstanding in an aggregate principal amount of \$104,390,000; and

WHEREAS, after due consideration, all or a portion of the Refundable Series 2015 Bonds may be refunded by the issuance and sale of one or more series of the lease revenue refunding bonds authorized by this ordinance (collectively, the "Series 2025 Bonds") so that a savings will be effected by the difference between the principal and interest cost over the life of the Series 2025 Bonds and the principal and interest cost over the life of such Refundable Series 2015 Bonds but for such refunding; and

WHEREAS, pursuant to the Original Indenture, as supplemented by the First Amendment thereto and by the Second Supplement thereto dated as of August 1, 2016, the Borough may, subject to certain

conditions, issue the Series 2025 Bonds in one or more series to refund all or a portion of the Refundable Series 2015 Bonds; and

WHEREAS, in connection with the issuance of the Series 2008 Bonds, the Borough entered into a Lease Purchase Agreement dated as of December 1, 2008, among the Borough, as lessor, the State of Alaska Department of Administration (the "DOA"), as lessee, and the State of Alaska Department of Corrections, as tenant agency, and subsequently a First Amendment thereto dated October 26, 2010, a Second Amendment thereto dated as of April 1, 2015, and a Third Amendment thereto dated as of August 1, 2016 (together, the "Lease Purchase Agreement"); and

WHEREAS, the DOA has requested, and the Borough deems it to be in its best interest and financially advantageous, that the Borough issue and sell the Series 2025 Bonds in one or more series to refund all or a portion of the Refundable Series 2015 Bonds; and

WHEREAS, the Borough has determined to sell the Series 2025 Bonds in one or more series to the underwriter or underwriters selected and engaged by the Borough (the "Underwriter"), pursuant to one or more bond purchase agreements; and

WHEREAS, the Borough and its advisors have examined proposed forms of the Third Supplement to Trust Indenture, Fourth Supplement to Trust Indenture, Fourth Amendment to Lease Purchase Agreement, Fifth Amendment to Lease Purchase Agreement, Refunding Trust Agreement, Continuing Disclosure Certificate, Offer to Purchase, Dealer Manager Agreement, Bond Purchase Agreement, and Forward

Delivery Bond Purchase Agreement, each of which has been presented to the Assembly on this date; have found the form and substance of such documents to be reasonably satisfactory and proper; and have determined to proceed in accordance with such documents by authorizing the issuance of the Series 2025 Bonds in one or more series and the refunding of all or a portion of the Refundable Series 2015 Bonds, the execution and delivery of such documents, and the taking of such other action as may be necessary or convenient therefor;

BE IT ENACTED:

Section 1. Classification. This Ordinance is a noncode ordinance.

Section 2. Authorization for Series 2025 Bonds. The Series 2025 Bonds are authorized to be issued in the principal amount of not to exceed \$110 million to refund all or a portion of the Refundable Series 2015 Bonds. The Series 2025 Bonds may be issued in one or more series of bonds to be designated "Matanuska-Susitna Borough State of Alaska Lease Revenue Refunding Bonds, Series 2025 (Goose Creek Correctional Center Project)," with such varying or additional designations as the Borough Manager or the Borough Director of Finance may determine.

Section 3. Amendment of Lease Purchase Agreement. The Assembly finds under Matanuska-Susitna Borough Code 23.05.030(G) that amending the Lease Purchase Agreement to reflect the savings effected by refunding all or a portion of the Refundable Series

2015 Bonds without regard to the fair rental value of the property conveyed by the Lease Purchase Agreement (the "Project") is in the best interest of the Borough. The Assembly ratifies the lease of the Project under the Lease Purchase Agreement, as amended by the Fourth Amendment thereto and, if applicable, the Fifth Amendment thereto, in each case without first being classified as required by Matanuska-Susitna Borough Code 23.10.030(B), and for the consideration that is provided in the Fourth Amendment thereto or the Fifth Amendment thereto, as applicable. The Assembly finds that the issuance of the Series 2025 Bonds to refund all or a portion of the Refundable Series 2015 Bonds will serve the public interest and be in the best interest of the Borough and financially advantageous, and is hereby approved.

Section 4. Approval of Financing Documents. The form and content of the Offer to Purchase, Dealer Manager Agreement, Third Supplement to Trust Indenture, Fourth Supplement to Trust Indenture, Fourth Amendment to Lease Purchase Agreement, Fifth Amendment to Lease Purchase Agreement, Continuing Disclosure Certificate, Bond Purchase Agreement, Forward Delivery Bond Purchase Agreement, and Refunding Trust Agreement are in all respects authorized, approved, and confirmed, and, at the direction of an authorized officer of the State of Alaska Department of Revenue (the "State"), the Borough Manager and the Borough Director of Finance are each individually authorized and directed to execute and deliver those documents for and on behalf of the Borough in substantially the form and content now before

this Assembly, but with such changes, modifications, additions, and deletions therein as shall to such officer seem necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of the approval of any and all changes, modifications, additions, or deletions therein from the form and content of those documents now before this Assembly, and from and after the execution and delivery of those documents, the Borough Manager, the Borough Director of Finance, the Borough Attorney, and the Borough Clerk are each individually authorized and directed to do all such acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of those documents as executed.

Section 5.Offer to Purchase Refundable Series 2015 Bonds. At the direction of an authorized officer of the State, the Borough Manager and the Borough Director of Finance, in consultation with the Borough's municipal advisor and the Dealer Manager, are each individually authorized to determine the Refundable Series 2015 Bonds to be offered and purchased pursuant to the Offer to Purchase and the Dealer Manager Agreement and the purchase price or prices for the Refundable Series 2015 Bonds to be so purchased.

Section 6.Sale of the Series 2025 Bonds.

(1) The Borough Manager and the Borough Director of Finance are each individually authorized, empowered, and directed to select and engage a financial institution to serve as Dealer Manager pursuant to the Offer to Purchase and the Dealer Manager Agreement and one or more financial institutions to serve as Underwriter.

(2) If all of the Refundable Series 2015 Bonds to be refunded by the Series 2025 Bonds (the "Refunded Bonds") are to be purchased pursuant to the Offer to Purchase and the Dealer Management Agreement, the Series 2025 Bonds shall be sold in one series at negotiated sale to the Underwriter pursuant to a Bond Purchase Agreement, Third Supplement to Indenture, Fourth Amendment to Lease Purchase Agreement, and Continuing Disclosure Certificate, and no Refunding Trust Agreement, Fourth Supplement to Indenture, or Fifth Amendment to Lease Purchase Agreement shall be executed and delivered.

(3) If none of the Refunded Bonds are to be purchased pursuant to the Offer to Purchase and the Dealer Management Agreement, the Series 2025 Bonds shall be sold in one series at negotiated sale to the Underwriter pursuant to a Bond Purchase Agreement or Forward Delivery Bond Purchase Agreement, Third Supplement to Indenture, Fourth Amendment to Lease Purchase Agreement, Continuing Disclosure Certificate, and Refunding Trust Agreement, and no Fourth Supplement to Indenture or Fifth Amendment to Lease Purchase Agreement shall be executed and delivered.

(4) If a portion of the Refunded Bonds are to be purchased pursuant to the Offer to Purchase and the Dealer Management Agreement, the Series 2025 Bonds shall be sold in two series at negotiated sale to the Underwriter. One series shall be sold pursuant to a Bond Purchase Agreement, Third Supplement to Indenture, Fourth Amendment to Lease Purchase Agreement, and Continuing Disclosure Certificate, and one series shall be sold pursuant to a Bond Purchase Agreement or Forward Delivery Bond Purchase Agreement, Fourth Supplement to Indenture, Fifth Amendment to Lease Purchase Agreement, Continuing Disclosure Certificate, and Refunding Trust Agreement.

(5) The Borough's municipal advisor has advised the Assembly that bond market conditions are fluctuating and that the most favorable market conditions for the sale of the Series 2025 Bonds may not occur on the date of a regular Assembly meeting. The Assembly has determined that it would be inconvenient to hold a special meeting on short notice to approve the terms of the sale of the Series 2025 Bonds of each series. Therefore, the Assembly determines that it is in the best interest of the Borough to delegate the authority to approve the terms of the sale of the Series 2025 Bonds of each series as provided herein. At the direction of an authorized officer of the State and subject to the limitations provided in Section 2, the Borough Manager and the Borough Director of Finance, in consultation with the Borough's municipal advisor and the Underwriter and Dealer Manager, are each individually authorized to determine the Refundable Series 2015

Bonds to be purchased pursuant to the Offer to Purchase and the Dealer Management Agreement, the Refundable Series 2015 Bonds to be refunded by the Series 2025 Bonds of each series, and the aggregate principal amount, maturity amounts, interest rates, yields, dated date, principal and interest payment dates, and other details of the Series 2025 Bonds of each series. At the direction of an authorized officer of the State, the Borough Manager and the Borough Director of Finance, in consultation with the Borough's municipal advisor and the Underwriter, are each individually authorized to obtain bond insurance for one or more series of the Series 2025 Bonds. At the direction of an authorized officer of the State, the Borough Manager and the Borough Director of Finance are each individually authorized to execute each Bond Purchase Agreement and Forward Delivery Bond Purchase Agreement with the Underwriter, each in substantially the form presented at this meeting. The authority granted to the Borough Manager and the Borough Director of Finance by this Section shall expire 270 days after the effective date of this ordinance. If the Borough Manager or the Borough Director of Finance has not executed a Bond Purchase Agreement and/or a Forward Delivery Bond Purchase Agreement with the Underwriter within 270 days after the effective date of this ordinance, such Bond Purchase Agreement or Forward Delivery Bond Purchase Agreement may not be executed on behalf of the Borough without further authorization from the Assembly.

Section 7. Call of Refunded Bonds for Redemption. At the direction of an authorized officer of the State, the Borough

Manager and the Borough Director of Finance are each individually authorized and directed to call for redemption on September 1, 2025, the Refunded Bonds that have not been purchased pursuant to the Offer to Purchase and the Dealer Management Agreement. The call for redemption of such Refunded Bonds shall be subject to the delivery of all of the Series 2025 Bonds to the Underwriter and payment therefor by the Underwriter, and such call shall become irrevocable upon such delivery and payment. Notice of redemption of such Refunded Bonds shall be given in the manner set forth in the Original Indenture, as amended by the First Supplement thereto.

Section 8. Offering Documents for the Series 2025 Bonds. The Borough Manager and the Borough Director of Finance, in consultation with the Borough's disclosure counsel and municipal advisor and the Underwriter, are each individually authorized and directed to prepare and approve a preliminary Official Statement and one or more Official Statements with respect to the Series 2025 Bonds to be used in connection with the sale of the Series 2025 Bonds. The Borough Manager and the Borough Director of Finance are each individually authorized, in consultation with the Borough's disclosure counsel and municipal advisor and the Underwriter, to deem the preliminary Official Statement final as of its date for purposes of Securities and Exchange Commission Rule 15c2-12, to approve any addendum, supplement, or amendment thereto, to approve the form of one or more final Official Statements for the Series 2025 Bonds, and to approve any addendum, supplement, or amendment thereto.

Section 9.Execution and Delivery of other Documents. The Mayor, the Borough Manager, the Borough Director of Finance, the Borough Attorney, and the Borough Clerk are each individually authorized and directed to execute and deliver for and on behalf of the Borough any and all additional agreements, certificates, documents, opinions, or other papers and to do and perform all things and determine all matters not determined by this ordinance, to the end that the Borough may carry out its obligations under the Offer to Purchase, the Dealer Manager Agreement, the Original Indenture, as supplemented by the First Supplement, Second Supplement Third Supplement, and, if applicable, the Fourth Supplement thereto (together, the "Indenture"), the Lease Purchase Agreement, as amended by the Fourth Amendment thereto and, if applicable, the Fifth Amendment thereto, the Series 2025 Bonds, each Continuing Disclosure Certificate, each Bond Purchase Agreement and Forward Bond Purchase Agreement, the Refunding Trust Agreement, and this ordinance.

Section 10.Prohibited Sale of Series 2025 Bonds. No person, firm, or corporation or any agent or employee thereof, acting as financial consultant to the Borough under an agreement for payment in connection with the sale of the Series 2025 Bonds is eligible to purchase the Series 2025 Bonds as a member of the original underwriting syndicate either at public or private sale.

Section 11.Continuing Disclosure. The Borough covenants and agrees that it will comply with and carry out all of the provisions of each Continuing Disclosure Certificate in substantially the

form presented at this meeting. Notwithstanding any other provision of this ordinance, failure of the Borough to comply with a Continuing Disclosure Certificate shall not be considered a default of the Borough's obligations under the Indenture or the Series 2025 Bonds; however, the beneficial owner of any Series 2025 Bond may bring an action for specific performance, to cause the Borough to comply with its obligations under the applicable Continuing Disclosure Certificate.

Section 12.Ratification of Certain Prior Actions. All prior actions taken by or on behalf of the Borough in connection with the Series 2025 Bonds are authorized, ratified, confirmed, and approved.

Section 13.Limited Obligations. The Series 2025 Bonds and the interest thereon shall be limited obligations of the Borough payable solely from the revenues, funds, and assets pledged under the Indenture to secure payment of the Series 2025 Bonds, and under no circumstances shall the Series 2025 Bonds be payable from any other revenues, funds, assets, or income of the Borough.

Section 14.Severability. If any one or more of the provisions of this ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Series 2025 Bonds.

Section 15. Incorporation of Recitals. The findings and determinations contained in the preambles of this ordinance are incorporated herein as part of this ordinance.

Section 16. Effective Date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this day 21 of January, 2025.



EDNA DeVRIES, Borough Mayor

ATTEST:



LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)



PASSED UNANIMOUSLY: Hale, Nowers, McKee, Sumner, Gamble, Fonov,
and Bernier