Ordinance 13-03(S)(2) Authorizing the City to Issue a Natural Gas Distribution Special Assessment Bond in the Principal Amount of Not to Exceed $12,700,000 to Finance the Design and Construction of Natural Gas Distribution Improvements

Ordinance ID: 13-03(S)(2)
Ordinance Status: Adopted
Ordinance Summary:
An Ordinance of the City Council of Homer, Alaska, Authorizing the City to Issue a Natural Gas Distribution Special Assessment Bond in the Principal Amount of Not to Exceed $12,700,000 to Finance the Design and Construction of Natural Gas Distribution Improvements in the City, Fixing Certain Details of Such Bond and Authorizing Its Sale; and Repealing HCC Chapter 17.08. City Manager.

CITY OF HOMER
HOMER, ALASKA
City Manager
ORDINANCE 13-03(S)(2)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AUTHORIZING THE CITY TO ISSUE A NATURAL GAS DISTRIBUTION SPECIAL ASSESSMENT BOND IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $12,700,000 TO FINANCE THE DESIGN AND CONSTRUCTION OF NATURAL GAS DISTRIBUTION IMPROVEMENTS IN THE CITY, FIXING CERTAIN DETAILS OF SUCH BOND AND AUTHORIZING ITS SALE; AND REPEALING HCC CHAPTER 17.08.

WHEREAS, On February 11, 2013, the Council adopted Ordinance 13-02 creating the City of Homer Natural Gas Distribution Special Assessment District (“District”), and authorizing the City Manager to proceed with the design and construction of a natural gas distribution system in the District (the “Improvement”), and negotiate for the sale of special assessment bonds or other financing for the construction of the Improvement for Council approval; and

WHEREAS, Interim financing for the Improvement is required in anticipation of the levying of special assessments against the real property in the District, and after the levying of the assessments, long-term financing for the Improvement will be required; and

WHEREAS, AS 29.46.130 and AS 29.46.140 authorize the City of Homer “City” respectively to issue notes to obtain interim financing for improvements in a special assessment district, and to issue bonds to obtain long-term financing for improvements in a special assessment district, in each case payable out of special assessments for the improvement, without voter approval; and

WHEREAS, The City Manager has negotiated a Loan Agreement between the Kenai Peninsula Borough (“Lender”) and the City, the form of which is now before this meeting, which provides for the Lender to purchase a bond to finance the Improvement on the terms and conditions set forth therein and in this Ordinance, and it is in the best interest of the City that the City sell the bond to the Lender under such terms and conditions; and

WHEREAS, Homer City Code Chapter 17.08, regarding special assessment bonds, contains terms that are obsolete and conflict with the terms of the financing authorized by this ordinance, and should be repealed.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1 – Definitions. In addition to the terms that are defined in the recitals above, the following terms shall have the following meanings in this Ordinance:

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

"Bond" means the "Natural Gas Distribution Special Assessment Bond, 2013" of the City, the issuance and sale of which are authorized herein.

"City" means the City of Homer, a municipal corporation of the State of Alaska, organized as a first class city under Title 29 of the Alaska Statutes.

"Council" means the Council of the City of Homer, as the general legislative authority of the City, as the same shall be duly and regularly constituted from time to time.

"District" means the Homer Natural Gas Distribution System Special Assessment District created by Ordinance 13-02.

"ENSTAR" means ENSTAR Natural Gas Company, a division of Semco Energy, Inc., a Michigan corporation.

"Guaranty Fund" means the fund of that name created by Section 15.

"Improvement" means the natural gas distribution system to be constructed in the District.

"Lender" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, organized as a second class borough under Title 29 of the Alaska Statutes.

"Loan Agreement" means the Loan Agreement between the City and the Lender concerning the Bond.

"Ordinance" means this Ordinance 13-03(S) of the City.

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

"Registrar" means the City Treasurer, or any successor that the City may appoint by resolution.

"Reserve Fund" means the fund of that name created by Section 14.

"Sinking Fund" means the fund of that name created by Section 13.

"Special Assessments" means all special assessments to be levied against real property in the District to pay the costs of the Improvement.

Section 2 – Authorization of Bond and Purpose of Issuance. For the purpose of providing the funds necessary to pay the costs of designing and constructing the Improvement, to pay interest on the Bond during the construction of the Improvement, the funding of the reserves required herein, and to pay all costs incidental thereto and to the issuance of the Bond, the City shall issue the Bond in a principal amount equal to the aggregate amount of the advances that the Registered Owner makes to the City for such purposes, but not to exceed $12,700,000.

Section 3 – Obligation of Bond. The Bond is a special obligation of the City and is payable solely from assessments to be levied against the real property in the District for the Improvement, and funds pledged for the payment of the Bond under this Ordinance. Said assessments shall constitute a sinking fund for the payment of principal of and interest on the Bond. Neither the faith and credit nor the taxing power of the City is pledged for the payment of the Bond.

Section 4 – Description of Bond. The Bond shall be designated "City of Homer Natural Gas Distribution Special Assessment Bond, 2013," shall be issued in fully registered form, and shall be numbered in the manner and with such additional designation as the Registrar deems necessary for purposes of identification, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the rules and regulations of any governmental authority or any usage or requirement of law with respect thereto. The Bond shall be dated as of its delivery date.

The Bond shall bear interest from its date at a rate of Four Percent (4.0%) per annum, and shall be payable in two payments of interest only on the 1st days of April 2014 and 2015, and ten equal annual installments of principal and interest, commencing on the 1st day of April 2016 and continuing on April 1 of each year thereafter, until April

1, 2025, when the remaining principal balance of the Bond, plus accrued interest, shall be due and payable. Interest will be computed on the basis of a 360-day year consisting of twelve 30-day months.

Section 5 – Optional Redemption. The Bond shall be subject to optional redemption in whole or in part at any time, at a redemption price equal to the principal amount of the Bond to be redeemed plus accrued interest to the date of redemption.

Section 6 – Notice of Redemption. Notice of any intended redemption of the Bond shall be given not less than 10 nor more than 45 days prior to the date fixed for redemption by first class mail to the Registered Owner of the Bond at its address as it appears on the Bond Register on the day the notice is mailed. The requirements of this section shall be deemed to be complied with when notice is mailed as herein provided, whether or not it is actually received by the Registered Owner. All official notices of redemption shall be dated and shall state the redemption date and the redemption price.
Section 7 – Form of Bond. The Bond shall be in substantially the following form, with such variations, omissions and insertions as may be required or permitted by this Ordinance:

UNITED STATES OF AMERICA
STATE OF ALASKA
CITY OF HOMER

No. _____ $_____

NATURAL GAS DISTRIBUTION SPECIAL ASSESSMENT BOND, 2013

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The City of Homer (the “City”), a municipal corporation of the State of Alaska, acknowledges itself indebted and for value received promises to pay (but only out of the sources mentioned herein) to the Registered Owner identified above, or its registered assigns, a principal amount equal to the aggregate amount of the advances that the Registered Owner makes to the City to pay the costs of designing and constructing the Improvement, to pay interest on the Bond during the construction of the Improvement, the funding of the reserves required herein, and to pay all costs incidental thereto and to the issuance of the Bond, but not to exceed Twelve Million Seven Hundred Thousand Dollars ($12,700,000), together with accrued interest on the outstanding principal amount of this Bond at a rate of Four Percent (4.0%) per annum. This Bond is payable in two payments of interest only on the 1st days of April 2014 and 2015, and ten equal annual installments of principal and interest, commencing on the 1st day of April 2016 and continuing on April 1 of each year thereafter, until April 1, 2025, when the remaining principal balance of the Bond, plus accrued interest, shall be due and payable. Both principal of and interest on this Bond shall be payable in any lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest on this Bond shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Installments of principal and interest on this Bond shall be paid at the office of the Registered Owner in Soldotna, Alaska, or at the option of the Registered Owner at the office of the Treasurer of the City in Homer, Alaska

This Bond is subject to prepayment by or on behalf of the City, in whole or in part, at any time without penalty, upon notice as provided in the Ordinance referred to below (the “Ordinance”).

This Bond is issued pursuant to Chapter 46, Title 29 of the Alaska Statutes and Ordinance 13-03(S) of the City duly and regularly adopted February 25, 2013, for the purpose of providing funds to pay the costs of designing and constructing a natural gas distribution system (the “Improvement”) in the City of Homer Natural Gas Distribution Special Assessment District, and is the single registered Bond entitled $12,700,000 City of Homer Natural Gas Distribution Special Assessment Bond, 2013.

THIS BOND IS PAYABLE SOLELY FROM ASSESSMENTS TO BE LEVIED AGAINST THE REAL PROPERTY IN THE CITY OF HOMER NATURAL GAS DISTRIBUTION SPECIAL ASSESSMENT DISTRICT, AND FUNDS PLEDGED FOR THE PAYMENT OF THE BOND UNDER THE ORDINANCE, AND IS NOT A GENERAL OBLIGATION OF THE CITY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY IS PLEDGED FOR ITS REPAYMENT.

IT IS HEREBY CERTIFIED and declared that this Bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Alaska and the ordinances of the City of Homer, and that all acts, conditions and things required to happen, to be done and to be performed precedent to and on the issuance of this Bond have happened, been done and been performed.

IN WITNESS WHEREOF, the City of Homer, Alaska, has caused this Bond to be executed by the signature of its Mayor and attested by its Clerk under the seal of the City on this 25th day of February, 2013.

CITY OF HOMER

_____
FRANCIE ROBERTS, MAYOR
PRO TEMPORE

ATTEST:

_____
JO JOHNSON, CMC, CITY CLERK

Section 8 – Execution. The Bond shall be executed in the name of the City by the signature of the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the signature of the City Clerk. The execution of the Bond on behalf of the City by persons who at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of delivery of the Bond or shall not have held office on the date of the Bond.

Section 9 – Payment of Principal and Interest. The Bond shall be payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Installments of principal and interest on the Bond shall be payable on the due date in immediately available funds at the office of the Registered Owner in Soldotna, Alaska, or at another location specified at the option of the Registered Owner; provided that the final installment of the principal of the Bond, plus accrued interest, shall be payable upon presentation and surrender of the Bond by the Registered Owner at the office of the Registered Owner in Soldotna, Alaska.

Section 10 – Registration.

(a) Bond Register. The Bond shall be issued only in registered form as to both principal and interest. The Registrar shall keep, or cause to be kept, a Bond Register at its principal office. The Treasurer of the City is hereby appointed as Registrar and paying agent for the Bond.

(b) Registered Ownership. The City and the Registrar, each in its discretion, may deem and treat the Registered Owner of the Bond as the absolute owner thereof for all purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of the Bond shall be made only as described in Section 9, but such registration may be transferred as herein provided. All such payments made as described in Section 9 shall satisfy and discharge the liability of the City upon the Bond to the extent of the amount or amounts so paid.

(c) Transfer or Exchange of Registered Ownership. The registered ownership of the Bond may be transferred or exchanged, but no transfer of the Bond shall be valid unless it is surrendered to the Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall cause to be executed and delivered, without charge to the Registered Owner or transferee, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered and canceled Bond. The Bond may be surrendered to the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity, and interest rate. The Registrar shall not be obligated to transfer or exchange the Bond following any notice of redemption.

Section 11 – Lost Stolen, Destroyed or Mutilated Bond. Upon surrender to the Registrar of a mutilated Bond, the City shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the City that a Bond has been destroyed, stolen or lost and of the ownership thereof, and upon furnishing the City with indemnity satisfactory to it, the City shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the execution and delivery of a new Bond under this section shall comply with such other reasonable regulations as the City may prescribe and pay such expenses as the City may incur in connection therewith.

Section 12 – Application of Bond Proceeds. The proceeds of the sale of the Bond shall be applied to pay the costs of designing and constructing the Improvement, including the funding of the reserves required herein, and to pay all costs incidental thereto and to the issuance of the Bond, including without limitation the costs of the Lender as provided in the Loan Agreement, and shall be deposited in the appropriate funds or accounts of the City for such purposes.

Section 13 – Sinking Fund. A special fund of the City designated the "City of Homer Natural Gas Distribution Special Assessment Bond Sinking Fund" is hereby created for the purpose of paying and securing the payment of the Bond. The Sinking Fund shall be held separate and apart from all other funds and accounts of the City and shall be a trust fund for the Registered Owner of the Bond. Payments of principal and interest on assessments levied for the Improvement in the District shall be deposited in the Sinking Fund. Amounts in the Sinking Fund shall be used to pay principal and interest on the Bond, and are hereby pledged for that purpose. Prepayments of assessments shall be applied to prepay the principal of the Bond, and upon any such prepayment the amortization of the principal of the Bond shall be adjusted so that each remaining scheduled payment of principal and interest on the Bond shall be in an equal amount.

Section 14 – Reserve Fund.

(a) A special fund of the City designated the "City of Homer Natural Gas Distribution Special Assessment Bond Reserve Fund" is hereby created for the purpose of paying and securing the payment of the Bond, and is hereby pledged for that purpose. The Reserve Fund shall be held separate and apart from all other funds and accounts of the City and shall be a trust fund for the Registered Owner of the Bond. There shall be paid into the Reserve Fund:

(1) That part of the proceeds of the Bond which is designated for deposit in the Reserve Fund by the Loan Agreement; and

(2) All monies received from ENSTAR as refunds of main extension advances or free main allowance arising out of new customers connecting to the Improvement; and

(3) Any Sinking Fund and Guaranty Fund balances remaining after the discharge of the Bond.

(b) Until the Bond has been discharged, the funds in the Reserve Fund may be used only to pay the difference between the amount of principal and interest due on the Bond and the amount in the Sinking Fund that is available to pay that principal and interest; provided, if the Finance Director determines that the amount of funds available in the Reserve Fund exceeds the amount of the next annual installment of principal and interest due on the Bond, the Finance Director may apply such excess to a prepayment of the Bond.

(c) At such time as the Finance Director determines that the sum of the amounts in the Reserve Fund, the Guaranty Fund and the Sinking Fund equals or exceeds the amount required to (i) discharge the Bond, (ii) pay all refunds of assessments required upon discharge of the Bond, and (iii) pay any other amounts that may be owing on the Bond, the Finance Director shall cause such payment to be made and the Bond to be discharged.

Section 15 – Guaranty Fund. A special fund of the City designated the "City of Homer Natural Gas Distribution Special Assessment Bond Guaranty Fund" is hereby created for the purpose of paying and securing the payment of the Bonds, and is hereby pledged for that purpose. The Guaranty Fund shall be held separate and apart from all other funds and accounts of the City and shall be a trust fund for the Registered Owner of the Bonds. The Council annually shall appropriate to the Guaranty Fund a sum the Council determines to be adequate, with all other available funds, to cover a deficiency in the funds available to pay principal and interest on the Bonds if the reason for the deficiency is nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments levied in the District shall be credited to the Guaranty Fund. Amounts in the

Guaranty Fund shall be used to pay principal and interest on the Bonds when other funds are not available for that purpose.

Section 16 – Amendatory and Supplemental Ordinances.

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

(1) To add to the covenants and agreements of the City in this Ordinance, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the City.

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

Any such supplemental Ordinance may be adopted without the consent of the Registered Owner of the Bond, notwithstanding any of the provisions of subsection (b) of this section.

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

(1) Extend the due date of any principal installment payable under the Bond, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owners of all of the Bond so affected; or

(2) Reduce the aforesaid percentage of Registered Owners of the Bond required to approve any such supplemental Ordinance without the consent of the Registered Owners of all of the Bond then outstanding.

(3) Remove the pledge and lien of this Ordinance on assessments to be levied against the real property in the District, and funds pledged for the payment of the Bond under this Ordinance.

It shall not be necessary for the consent of the Registered Owner of the Bond under this subsection (b) to approve the particular form of any proposed supplemental Ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) Upon the adoption of any supplemental Ordinance pursuant to the provisions of this section, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City and the Registered Owner of the Bond shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendment, and all the terms and conditions of any such supplemental Ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

(d) Any Bond executed and delivered after the adoption of any supplemental Ordinance pursuant to this section may bear a notation as to any matter provided for in the supplemental Ordinance, and if the supplemental Ordinance shall so provide, a new Bond so modified as to conform, in the opinion of the Council, to any modification of this Ordinance contained in any such supplemental Ordinance may be prepared by the City and delivered without cost to the Registered Owner of the Bond then outstanding, upon surrender for cancellation of such Bond in an equal aggregate principal amount.

Section 17 – Sale of Bond; Loan Agreement. The Bond shall be sold at negotiated sale to the Lender as provided in the Loan Agreement. The City Manager is hereby authorized to execute the Loan Agreement, in substantially the form presented at this meeting, but with such changes, modifications, additions and deletions therein as he shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document

now before this meeting, and from and after the execution and delivery of said document, the City Manager hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Loan Agreement as executed. Upon the execution of the Loan Agreement, the City shall execute and deliver the Bond to the Borough in the form authorized herein.

Section 18 – Authority of Officers. The City Manager, the acting City Manager, the Clerk and the acting Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this Ordinance, to the end that the City may carry out its obligations under the Bond and this Ordinance.

Section 19 – Miscellaneous. No recourse shall be had for the payment of the principal of or the interest on the Bond or for any claim based thereon or on this Ordinance against any member of the Council or officer of the City or any person executing the Bond.

Section 20 – Ordinance a Contract with Registered Owner. In consideration of the purchase and acceptance of the Bond by those who shall own the same from time to time, the provisions of this Ordinance shall constitute a contract with the Registered Owners of each Bond, and the obligations of the City under this Ordinance shall be enforceable by any court of competent jurisdiction; and the covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the Registered Owners of any and all of the Bond.

Section 21 – 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 Bond.

Section 22 – Repeal of HCC 17.08. HCC Chapter 17.08 is repealed.

Section 23 – Codification. Section 22 of this Ordinance is of a permanent and general character and shall be included in the City Code. The remainder of this Ordinance is not permanent in nature, and shall not be codified.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 25th day of February 2013.

CITY OF HOMER

_____
FRANCIE ROBERTS, MAYOR
PRO TEMPORE

ATTEST:

_____
JO JOHNSON, CMC, CITY CLERK

YES:
NO:
ABSTAIN:
ABSENT:

First Reading:
Public Hearing:
Second Reading:
Effective Date:

Reviewed and approved as to form:

_____ _____
Walt E. Wrede, City Manager Thomas F. Klinkner, City Attorney

Date: _____ Date: _____

Ordinance Dates**Ordinance Introduction Date:** Mon Jan 28th, 2013
Ordinance Public Hearing Date: Mon Feb 11th, 2013
Ordinance Second Reading Date: Mon Feb 11th, 2013
Ordinance Effective Date: Tue Feb 26th, 2013
Ordinance Files Ordinance 13-03(S)(2)

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