

CITY OF HOMER  
HOMER, ALASKA

ORDINANCE NO. 87-16

AN ORDINANCE of the City of Homer, Alaska, providing for the issuance and sale of a special assessment bond of the City in the principal amount of \$592,480 for the purpose of providing part of the money required to pay for improvements to the sewer system in the East Hill Road Sewer Improvement Area; and providing for the date, form, terms and maturity of said special assessment bond.

WHEREAS, the City of Homer, Alaska (hereinafter called the "City"), has created the East Hill Road Sewer Improvement Area (hereinafter called "East Hill Road Sewer L.I.D.") in the East Hill Road area of the City in the manner required by law; and

WHEREAS, the assessment roll of the East Hill Road Sewer L.I.D. in the total principal amount of \$592,480 has been confirmed by Resolution No. 87-36 of the City, passed on May 11, 1987 in the manner required by law; and

WHEREAS, \$0 of such assessments were paid during the period permitted by law for the payment of assessments without penalty, interest or costs; and

WHEREAS, it is necessary that the City issue its special assessment bond in the total principal sum of \$592,480 in order to provide part of the money necessary to pay the costs incurred in the construction, acquisition and installation of improvements to the sewer system within the area of East Hill Road Sewer L.I.D.; and

WHEREAS, the City has heretofore entered into an agreement with the United States of America acting through its Farmers Home Administration whereby the United States agreed to purchase such bond to be issued; and

WHEREAS, the City deems it advisable and in the best interest of the City that its special assessment bond be issued and sold to the Farmers Home Administration in fully registered form.

NOW, THEREFORE, THE CITY OF HOMER, ALASKA ordains as follows:

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

"Assessments" means the amounts levied as special assessments against the properties in East Hill Road Sewer L.I.D. specially benefitted by the Project. Assessments shall include installments thereof and interest and penalties thereon.

"Bond" means the special assessment bond of the City in the principal amount of \$592,480, the issuance and sale of which is authorized herein.

"City" means the City of Homer, Alaska, a municipal corporation duly organized and existing in the State of Alaska.

"City Code" means the published codification of ordinances of the City.

"City Council" means the legislative body of the City as the same shall be duly constituted from time to time.

"East Hill Road Sewer L.I.D." means the East Hill Road Sewer Improvement District located within the East Hill Road area of the City and duly created by Resolution No. 86-41(S) of the City Council.

"Government" means the Farmers Home Administration of the United States Department of Agriculture.

"Guarantee Fund" means the special assessment district guarantee fund of the City established by Section 17.08.090 of the City Code for the purpose of guaranteeing the payment of the principal of and interest on all special assessment bonds of the City, and warrants issued upon any special assessment district funds.

"Payment Dates" mean the days of each year on which the interest on and installments of principal of the Bond are payable. The Payment Dates shall be the annual anniversary date of the day of delivery of the Bond to the initial purchaser thereof.

"Project" means the plan of improvements to the sewer system of the City authorized by Resolution No. 86-41(S) to be constructed, acquired and installed in East Hill Road Sewer L.I.D.

"Special Assessment Fund" means the 1987 East Hill Road Sewer Improvement District Fund created by Section 9 of this Ordinance.

Section 2. Authorization of Bond. For the purpose of providing part of the funds necessary to pay the costs of the Project and incidental to the issuance of the Bond, the City shall

issue and sell its special assessment bond in the principal amount of \$592,480.

Section 3. Description of the Bond. The Bond shall be designated "City of Homer, Alaska, East Hill Road Sewer Improvement District Bond, 1987," shall be dated as of the date of delivery to the Government, shall be issued in the form of a single bond numbered R-1 in the principal sum of \$592,480, shall be fully registered, shall bear interest on unpaid installments payable annually on the Payment Dates (commencing on the first such day following delivery of the Bond) in each year at the rate of 5.875% per annum and shall mature in installments on the Payment Dates in each year as follows:

<u>Years</u>	<u>Amounts</u>
1988	\$29,624
1989	29,624
1990	29,624
1991	29,624
1992	29,624
1993	29,624
1994	29,624
1995	29,624
1996	29,624
1997	29,624
1998	29,624
1999	29,624
2000	29,624
2001	29,624
2002	29,624
2003	29,624
2004	29,624
2005	29,624
2006	29,624
2007	29,624

The City Treasurer shall act as authenticating trustee, transfer agent and registrar for the Bond (collectively, the "Bond Registrar").

Both principal of and interest on the Bond shall be payable in lawful money of the United States of America at the office of the Bond Registrar in the City of Homer; provided, however, that so long as the Government is the owner of the Bond, payments of principal and interest shall be made by the Bond Registrar directly to the Government at its office serving the City of Homer area. Upon final payment, the Bond shall be surrendered for cancellation.

Section 4. Execution of Bond. The Bond shall be signed on behalf of the City by the Mayor of the City and shall be attested by the City Clerk. The Bond shall have the seal of the City impressed thereon.

Section 5. Prepayment Privileges. The City hereby reserves the right to prepay, without penalty or premium, all or any portion of the unpaid principal installment of the Bond in chronological order on any interest payment date.

Section 6. Prepayment Notice. Written notice of any such intended prepayment shall be given to the registered owner at least thirty (30) days prior to said prepayment; provided, however, that so long as the Bond is held by the Government, notice of prepayment shall not be required.

Section 7. Form of Bond. The Bond and the certificate of registration to be endorsed thereon shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. R-1

592,480

STATE OF ALASKA  
CITY OF HOMER

EAST HILL ROAD SEWER IMPROVEMENT DISTRICT BOND,  
1987

The City of Homer, Alaska (herein after called the "City"), a municipal corporation of the State of Alaska, acknowledges itself indebted and for value received promises to pay to the Farmers Home Administration, United States Department of Agriculture, or its successor (hereinafter sometimes called the "Payee"), or its registered assigns (hereinafter sometimes called the "Alternate Payee"), the principal sum of FIVE HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED EIGHTY AND NO/100 DOLLARS in the following installments at the following times:

<u>Years</u>	<u>Amounts</u>
1988	\$29,624
1989	29,624
1990	29,624
1991	29,624
1992	29,624

1993	29,624
1994	29,624
1995	29,624
1996	29,624
1997	29,624
1998	29,624
1999	29,624
2000	29,624
2001	29,624
2002	29,624
2003	29,624
2004	29,624
2005	29,624
2006	29,624
2007	29,624

in lawful money of the United States of America, with interest on the balance of said principal from time to time remaining unpaid from the date hereof at the rate of 5.875% per annum payable annually on the anniversary date of the day of delivery of this bond to the initial Payee, commencing on the first such day following delivery hereof until all of such principal installments have been paid or such payment has been duly provided for.

So long as the Payee is the registered owner of this bond, payments of principal and interest shall be made by the Treasurer of the City of Homer, Alaska, as Bond Registrar, directly to the Payee at the office of the Farmers Home Administration serving the City of Homer, Alaska area. So long as an Alternate Payee is the registered owner hereof, said payments shall be made at the office of the Treasurer of the City of Homer, Alaska, as Bond Registrar.

Upon final payment of the principal and interest, this bond shall be surrendered to the City for cancellation.

Both principal of and interest on this bond are payable solely out of the special fund of the City known as the "1987 East Hill Road Sewer Improvement District Fund" (herein called the "Bond Fund") created by Ordinance No. 82-16 of the City (herein called the "Bond Ordinance") and the special assessment district guarantee fund of the City created by Section 17.08.090 of the City Code.

The City hereby reserves the right on any interest payment date to prepay any or all of the unpaid principal amount of this bond in chronological order. Notice of any such prepayment shall be given at least thirty days prior to the prepayment date by mailing to the registered owner of this bond a notice fixing such prepayment date, and the amount of the principal to be prepaid;

provided, that so long as this bond is held by the Payee, such advance notice shall not be required.

This bond is secured by special assessments levied in the East Hill Road Sewer Improvement District created by Resolution No. 86-41(S) of the City against properties specially benefitted by the improvements to the sewer system of the City constructed within said District.

Sections 17.08.050 of the City Code of Homer, Alaska provides as follows:

Neither the holder nor the owner of any special assessment district bond, interest coupons or warrant issued against a special assessment district fund shall have any claim therefor against the City, except for payment from the special assessments made for the improvements for which such special assessment district bond was issued and except for payment from the special assessment district guarantee fund of the City. The remedy of the holder or owner of such special assessment district bond shall be confined to the enforcement of such assessments and to said guarantee fund. The City shall not be liable to the holder or owner of any such bond, interest coupon or warrant for any loss to the said guarantee fund occurring in the lawful operation thereof.

The sources of funds which secure this bond are set forth with particularity in the Bond Ordinance. Reference is made to the Bond Ordinance for a complete statement of the covenants and obligations of the City with regard to this bond and security therefor.

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

This bond is issued in fully registered form. Upon surrender to the Bond Registrar, this bond is interchangeable for bonds in any authorized denomination of an equal maturity. This bond is transferable only on the records maintained by the Bond Registrar for that purpose upon the surrender of this bond by the registered owner hereof or nominee or his/her duly authorized agent and only if endorsed in a manner provide hereon, and thereupon a new fully registered bond of like principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor. Such exchange or transfer shall be without cost to the registered owner or transferee. The City may deem the person in whose name this bond is registered to be the absolute owner hereof for the purpose

of receiving payment of the principal of and interest on this bond and for any and all other purposes whatsoever.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and the laws of the State of Alaska and the resolutions and ordinances of the City, and that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, been done and performed.

IN WITNESS WHEREOF, the City of Homer, Alaska, has caused this bond to be signed by its Mayor, to be attested by its Clerk and the corporate seal of the City to be impressed hereon, this 27 day of July, 1987.

CITY OF HOMER, ALASKA

By John P. Colton  
Mayor

ATTEST:

Paul J. Whalin  
Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: 7/21/87

This bond is the bond described in the within-referenced Ordinance No. 8716 of the City of Homer, Alaska, and is the City of Homer, Alaska, East Hill Road Sewer Improvement District Bond, 1987, dated July 27, 1987, of such City.

TREASURER OF THE CITY OF HOMER  
As Bond Registrar

By Christopher Wherry  
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

PLEASE INSERT SOCIAL SECURITY OR TAXPAYER IDENTIFICATION NUMBER OF TRANSFEREE

\_\_\_\_\_

(Please print or typewrite name and address, including zip code of Transferee)

\_\_\_\_\_ the within bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ of \_\_\_\_\_, or its successor, as Trustee to transfer said bond on the books kept for registration thereof with full power of substitution in the premises.

DATED: \_\_\_\_\_, \_\_\_\_\_.

SIGNATURE GUARANTEED:

\_\_\_\_\_

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Section 8. Registration and Transfer of the Bond. The Bond Registrar shall keep, or cause to be kept, at its office sufficient records for the registration and transfer of the Bond. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this Ordinance and to carry out all of the Bond Registrar's powers and duties under this Ordinance. The Bond may be transferred by the registered owner thereof, provided that such transfer relates to the entire unpaid principal amount of the Bond, and any such transfer shall be noted on the bond registration book of the City in the office of the Bond Registrar.

Section 9. Source of Funds for Repayment of Bond. The principal of and interest on the Bond shall be payable solely from the Assessments and from the Guarantee Fund. The Special Assessment Fund shall constitute a fund for the payment of the principal of and interest on the Bond. The Assessments shall be collected by the Treasurer of the City, shall be deposited in the following special funds of the City and shall be used solely for the purposes specified herein.

A. Special Assessment Fund. There is hereby created a special fund of the City to be known as the East Hill Road Sewer Improvement District Fund (herein referred to as "Special Assessment Fund"), which fund shall be used for no purpose other than redemption and retirement of the Bond issued by the City to pay the cost of carrying out the improvements within East Hill Road Sewer L.I.D. The City Treasurer shall deposit into the Special Assessment Fund the Assessments collected and the proceeds received on the sale of the Bond. Amounts in the Special Assessment Fund shall be expended and used only for the following purposes and in the following order of priority:

(1) Redemption of warrants or notes drawn upon the Special Assessment Fund;

(2) Payment of the costs of the Project;

(3) Payments of the principal of and interest on the Bond; and

(4) Payments to the Guarantee Fund, but only after all costs of the Project have been paid and the principal of and interest on the Bond have been paid.

B. Guarantee Fund. There has heretofore been created a Guarantee Fund for the purpose of guaranteeing the payment of the principal of all special assessment bonds, interest coupons pertaining thereto, and warrants issued upon any special assessment district funds. The City hereby covenants that the Guarantee Fund shall be kept separate from all other money and funds of the City and shall be held in trust for the uses and purposes herein provided.

(1) Deposits in the Guarantee Fund. The City hereby further covenants that within five (5) years from the date of delivery of the Bond it will deposit in the Guarantee Fund an amount so that the total funds on hand in the Guarantee Fund shall not be less than five percent of the total of the principal amounts of the Bond and other special assessment bonds of the City then outstanding. Said deposits may consist in whole or in part of the proceeds of an interfund loan of the City; provided, however, that said loan shall not be required to be repaid if,

after such repayment, the balance in the Guarantee Fund would be less than the minimum required by Section 17.08.090 of the City Code or required by the covenants of this Ordinance. Any moneys paid out of the Guarantee Fund to redeem special assessment district bonds, coupons pertaining thereto, or warrants, shall be replaced by the City as soon as possible out of any legally available sources.

(2) Uses of the Guarantee Fund. Amounts in the Guarantee Fund shall be used to purchase, in the order presented, defaulted special assessment bonds of the City, interest coupons pertaining thereto and special assessment fund warrants of the City.

Upon a payment of any sum from the Guarantee Fund, the City, as trustee of said Fund, shall be subrogated to all the rights of the owner or holder of such bond, interest coupon or warrant so paid, and the proceeds thereof or underlying assessments shall become a part of said Guarantee Fund.

Section 10. Nonliability of the City. Section 17.08.050 of the City Code specifies as follows:

Neither the holder nor the owner of any special assessment district bond, interest coupons or warrant issued against a special assessment district fund shall have any claim therefor against the City, except for payment from the special assessments made for the improvements for which such special assessment district bond was issued and except for payment from the special assessment district guarantee fund of the City. The remedy of the holder or owner of such special assessment district bond shall be confined to the enforcement of such assessments and to said guarantee fund. The City shall not be liable to the holder or owner of any such bond, interest coupon or warrant for any loss to the said guarantee fund occurring in the lawful operation thereof.

Section 11. Security of the Bondowner. The Assessments on the respective properties in East Hill Road Sewer L.I.D. constitute a first lien prior and paramount to all liens, except City real property tax liens, upon said properties from the time of passage of Resolution No. 87-36, confirming the assessment roll on said properties, and the lien is of the same character, effect and duration as a lien for City real property taxes.

The City hereby covenants that it will collect and foreclose such liens for Assessments in East Hill Road Sewer L.I.D. in accordance with the procedures provided in Title 29 of Alaska

Statutes for the collection, foreclosure and enforcement of municipal tax liens on real property. Such lien is hereby additionally pledged to secure payment of the principal of and interest on the Bond, and shall be enforceable in default of said payment by the registered owner of the Bond in any civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property.

The City hereby further covenants with respect to City owned lots included in East Hill Road Sewer L.I.D. that it shall levy and collect taxes sufficient to pay the assessments against the City owned lots when due and hereby pledges the full faith and credit of the City that such assessments will be paid when due into the Special Assessment Fund.

Section 12. Sale of the Bond. The Bond shall be sold to the Government on the terms and conditions specified herein.

Section 13. Approval of the Project. The appropriate official of the City is hereby directed to provide the Government with evidence as requested by the Government that the completed Project is acceptable to all regulatory agencies.

Section 14. Easements and Rights-of-Way. The City hereby covenants that it has obtained all lands, rights-of-way, easements, permits and franchises required for and to complete the Project. The appropriate official of the City is hereby authorized to execute on behalf of the City the following forms for the purpose of providing satisfactory evidence to the Government of such action: Form FmHA 442-20, "Rights-of-Way Easement"; Form FmHA 442-21, "Rights-of-Way Certificate"; and Form FmHA 442-22, "Opinion of Counsel Relative to Rights-of-Way." Such official is further authorized to execute additional documents that may be required by the Government relative to the granting of easements over private lands in East Hill Road Sewer L.I.D.

Section 15. Equal Opportunity for Employment. The appropriate official of the City is hereby authorized and directed to execute for and on behalf of the City, Form FmHA 400-1, entitled "Equal Opportunity Agreement," to which is attached an "Equal Opportunity Clause."

Section 16. Nondiscrimination. The appropriate official of the City is hereby also authorized and directed to execute on behalf of the City, Form FmHA 400-4, entitled "Assurance Agreement" (under Title IV, Civil Rights Act of 1964).

Section 17. Ordinance As Contract. The provisions of this Ordinance shall constitute a contract between the City and the Government so long as any portion of the Bond remains unpaid.

Section 18. Arbitrage Covenant. The City covenants and agrees with the owner of the Bond that it will not use or invest the proceeds of the Bond or any other funds or obligations of the City which may be deemed to be proceeds of such Bond pursuant to Section 148 of the Internal Revenue Code of 1986 and the applicable regulations thereunder which, if such use had been reasonably expected on the date of delivery of the Bond to the original purchaser thereof, would cause the Bond to be an "arbitrage bond" as defined in said section and said regulations. The City will comply with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (or any successor provision thereof applicable to the Bond), and the applicable regulations promulgated thereunder throughout the term of the Bond.

Section 19. Interest Rate on Unpaid Assessments. The assessments levied in East Hill Road Sewer L.I.D. shall bear interest at a rate of 6.375 percent, being one half of one percent higher than the interest rate on the Bond.

Section 20. Bond Sale Execution. The proper City officials are authorized and directed to do everything necessary for the prompt execution, issuance and delivery of the Bond and for the proper use and application of the proceeds of such sale.

CITY OF HOMER, ALASKA

By John P. Callahan  
Mayor

ATTEST:

Patsy J. Whalen  
Clerk

Reviewed and approved as to form and content:

Phil Shealy  
City Manager

\_\_\_\_\_  
Bond Counsel

Date: 7/31/87

Date: \_\_\_\_\_

FIRST READING	<u>06/22/87</u>
PUBLIC HEARING	<u>07/13/87</u>
SECOND READING	<u>07/27/87</u>
DATE OF ADOPTION	<u>7/29/87</u>
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