

CITY OF HOMER, ALASKA

RESOLUTION NO. 89-69

RESOLUTION OF THE CITY OF HOMER, ALASKA, AUTHORIZING THE ISSUANCE AND SALE OF A GRANT ANTICIPATION NOTE OF THE CITY IN THE TOTAL PRINCIPAL AMOUNT OF \$2,200,000; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SALE OF SUCH NOTE; FIXING THE DATE, FORM, INTEREST RATE, TERMS, MATURITY AND COVENANTS OF SUCH NOTE; CREATING A GRANT ANTICIPATION NOTE FUND FROM WHICH THE PRINCIPAL OF AND INTEREST ON SUCH NOTE SHALL BE PAID; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 24, 1988, the City of Homer, Alaska (the "City"), passed Resolution 88-103, adopting a capital improvement budget including the construction, acquisition and installation of certain improvements to the City's Sewer Treatment Plant (the "Project"); and

WHEREAS, the City has begun construction of the Project pursuant to the capital improvement budget; and

WHEREAS, the City expects to receive, throughout the course of such construction, State Environmental Conservation Grants in the approximate amount of \$2,800,000; and

WHEREAS, AS 29.47.030 authorizes the issuance of grant anticipation notes by municipalities to provide interim financing for projects included in such capital improvement budgets in anticipation of the receipt of state and federal grant funds; and

WHEREAS, the City Council has received evidence of interest in purchasing a grant anticipation note in the principal amount of \$2,200,000 and considers it to be in the best interests of the City and its inhabitants to accept such offer to purchase such note for the purpose of paying part of the costs of the Project;

NOW, THEREFORE, THE CITY OF HOMER, ALASKA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Definitions. As used in this Resolution, the following words shall have the following meanings, unless a different meaning clearly appears from the context:

A. "Bank" means Security Pacific Bank Alaska, N.A., the purchaser of the Note pursuant to this Resolution.

B. "City" means the City of Homer, Alaska, a city duly organized and existing under the Constitution and laws of the State of Alaska.

C. "Construction Fund" means the "City of Homer Sewer System Construction Fund" previously created by the City.

D. "Grants" means those State Environmental Conservation Grants in the total amount of approximately \$2,800,000 to be received by the City for the cost of the Project, and in anticipation of the receipt of which Grants the Note is issued.

E. "Note" means the grant anticipation note in the principal amount of \$2,200,000 issued pursuant to this Resolution to provide short term financing for the purposes set forth in the recitals of this Resolution.

F. "Note Fund" means the "City of Homer, Alaska Grant Anticipation Note Fund, 1989A" created by Section 10 of this Resolution.

G. "Prime Rate" means the interest rate established periodically by Security Pacific Bank Alaska, N.A. as an index rate and published by Security Pacific Bank as its Prime Rate.

H. "Project" means the construction, acquisition and installation of certain improvements to the City's Sewer Treatment Plant.

I. "Request for Draw" means a written request by an authorized representative of the City for a draw from the line of credit authorized to be established by this Resolution, all as more fully described in Section 4 of this Resolution.

J. "Treasurer" means the Treasurer of the City of Homer, Alaska, or any successor to his/her functions and duties.

Section 2. Authorization of the Note. For the purpose of providing short term financing during construction of the Project, and in anticipation of the receipt of the Grants, the City hereby authorizes the issuance and sale of its grant anticipation note in the aggregate principal amount of \$2,200,000.

Section 3. Description of Note. The Note shall be designated the "City of Homer, Alaska, State Grant Anticipation Note, 1989A"; shall be dated as of the date of delivery; shall be issued in fully registered form; and shall be numbered GR1. This Note shall mature in one year from the date of delivery of the Note.

The Note shall bear interest only on the Outstanding Principal Balance of the Note. The Outstanding Principal Balance of the Note on any particular day shall be the aggregate of all funds which the City has drawn from the date of the Note to that day less the

aggregate of all principal payments made by the City on or before that day. Interest on a particular principal amount so advanced shall be determined from the date of the Request for Draw by which the City drew that principal amount from the Bank.

Interest on the Note will accrue at a fluctuating rate which at any given time shall be equal to the sixty-nine percent of the Prime Rate.

Both the principal amount advanced and the interest accrued on such principal amount advanced shall be payable within 90 days after the Request for Draw by which the City drew the principal amount from the Bank, except that the City shall make best efforts to pay such principal amount and interest thereon within 15 days after the next Grant payment is received by the City after such Request for Draw. All principal amounts advanced and interest accrued on such amounts shall mature and shall be payable within one year from the date of the note even if such maturity date is less than 90 days from the last Request for Draw. Upon final payment of all principal and interest amounts, the Note shall be surrendered to the City for cancellation.

Section 4. Request for Draw. A Request for Draw pursuant to the Note may be made by the City in writing at any time. The City hereby delegates the City Treasurer authority to make written Request for a Draw pursuant to this Resolution. The Bank shall incur no liability to the City or to any other person in acting upon any written notice which the Bank believes in good faith to have been given by an official or other person authorized to borrow on behalf of the City, or in otherwise acting in good faith in making advances pursuant to this Resolution.

Section 5. Medium and Source of Payment. Both principal of and interest on the Note shall be payable in lawful money of the United States of America. The Note shall be an obligation only of the Note Fund and shall be payable and secured as provided herein.

Section 6. Registration. The Note shall be in registered form as to both principal and interest. The Treasurer shall act as Registrar and shall maintain the Note Register. Such Note Register shall contain the name and mailing address of the owner of the Note. The Note may be transferred only if endorsed in the manner provided hereon and surrendered to the Treasurer in exchange for a new Note registered in the name of the transferee. Such transfer shall be without cost to the owner or transferee.

Principal and interest on the Note shall be paid to the registered owner or assigns at the address appearing on the Note Register as of the 15th day of the month preceding each payment date.

The Treasurer shall keep, or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Note which shall at all times be open to inspection

by the City. The Treasurer is authorized, on behalf of the City, to authenticate and deliver the Note when transferred or exchanged in accordance with the provisions of such Note and this Resolution and to carry out all of the powers and duties of Note Registrar under this Resolution.

Section 7. Right of Prior Redemption. The Note may be prepaid at any time without premium or penalty upon ten days written notice to the Bank.

Section 8. Defeasance. In the event that money and/or direct obligations of the United States of America, maturing or having guaranteed redemption prices at the option of the holder at such time or times and bearing interest to be earned thereon in amounts (together with such money, if any) sufficient to redeem and retire the Note in accordance with its terms, are hereafter irrevocably set aside in a special account and pledged and used to effect such redemption and retirement, then no further payments need be made into the Note Fund for the payment of the principal of and interest on the Note and the Note shall then cease to be entitled to any lien, benefit or security of this Resolution, except as to the funds so set aside and pledged, and such Note shall no longer be deemed to be outstanding hereunder, or under any resolution authorizing the issuance of bonds, warrants or other indebtedness of the City.

Section 9. Application of Note Proceeds. There has heretofore been created the City of Homer Sewer Construction Fund. The proceeds of the Note shall be paid into such Construction Fund.

Said moneys in said fund shall be drawn upon for paying the costs of the Project, for repaying any other funds or accounts of the City which may have advanced moneys for such purposes and for paying all expenses incidental to such purposes incidental to the issuance of the Note. In the event there are any moneys left remaining in such Construction Fund after the payment of all of such costs and expenses, the same may be transferred to the City of Homer State Grant Anticipation Note Fund, 1989A.

Money on deposit in the Construction Fund not immediately needed to pay such interest or principal may temporarily be deposited in such institutions or invested in any obligations which are legal investments for City funds. Any interest or profit from the investment of such money shall be deposited in the Construction Fund.

Section 10. Payment of the Note. A special fund of the City to be known as the "City of Homer State Grant Anticipation Note Fund, 1989A," is hereby created. Said Note Fund shall be drawn upon for the sole purpose of paying the principal of and interest on the Note. Money on deposit in the Note Fund not immediately needed to pay such interest or principal may temporarily be deposited in such institutions or invested in any obligations which

are legal investments for City funds. Any interest or profit from the investment of such money shall be deposited in the Note Fund.

The City hereby covenants that upon receipt of the Grants, it will deposit in the Note Fund proceeds of the Grants at such times and in such amounts so as to provide therein moneys sufficient, together with other moneys of the City, if any, legally available and specifically set aside for such purpose, to pay the principal of and interest on the Note as the same shall become due. Grant proceeds not immediately needed to provide funds for the payment of the principal and/or interest on the Note may be deposited in the Construction Fund for the purposes set forth in Section 9 of this Resolution.

The City hereby further obligates and binds itself to set aside in the Note Fund, beginning after the date of delivery of the Note, immediately upon receipt of the Grants, all proceeds of the Grants received until there has been accumulated in the Note Fund an amount which will be sufficient, together with other moneys of the City, if any, legally available and specifically set aside in the Note Fund for such purposes, to pay the principal of and interest on the Note as the same shall become due. Once such amount has been accumulated in the Note Fund, the remaining Grant proceeds received may be deposited in the Construction Fund and used for the purposes set forth herein.

Section 11. Form of the Note. The Note shall be in substantially the following form:

UNITED STATES OF AMERICA

No. _____

\$ _____

STATE OF ALASKA

CITY OF HOMER

STATE GRANT ANTICIPATION NOTE, 1989A

The City of Homer, Alaska, a municipal corporation organized and existing under and by virtue of the laws of the State of Alaska (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the registered owner:

or registered assigns solely from the sources herein referred to, the principal of the Note at the times hereinafter specified, with interest thereon as herein provided until such principal sum is paid or payment has been duly provided for. The Note shall mature in one year from the date of delivery of the Note. Upon final payment of all principal and interest amounts, this Note shall be surrendered to the City for cancellation.

Both principal of and interest on this Note are payable in lawful money of the United States of America at the office of the City Treasurer.

The Outstanding Principal Balance of the Note on any particular day shall be the aggregate of all funds which the City has drawn from the date of this Note to that day less the aggregate of all principal payments made by the City on or before that day. Interest on a particular principal amount so advanced shall be determined from the date of the Request for Draw by which the City drew that principal amount. The Request for Draw shall be made pursuant to Resolution No. 89-69 (the "Note Resolution").

This Note bears interest only on the Outstanding Principal Balance of the Note. Interest on the Note will accrue at a fluctuating rate which at any given time shall be equal to sixty-nine percent of the Prime Rate as defined in the Note Resolution.

Both the principal amount advanced and the interest accrued on such principal amount advanced shall be payable within 90 days after the Request for Draw by which the City drew the principal amount from the Bank, except that the City shall make best efforts to pay such principal amount and interest thereon within 15 days after the next Grant payment is received by the City after such Request for Draw. All principal amounts advanced and interest accrued on such amounts shall mature and shall be payable in one year from the date of this Note even if such maturity date is less than 90 days from the last Request for Draw.

This note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Note Resolution until the Certificate of Authentication hereon shall have been manually signed by the Note Registrar.

The City does hereby pledge and bind itself to set aside and pay into the City of Homer, Alaska, State Grant Anticipation Note Fund, 1989A (the "Note Fund") created by the Note Resolution out of the proceeds of State Grants, to be received by the City in an amount of approximately \$2,800,000 and in anticipation of which the Note is issued (the "Grants"), funds sufficient, with other moneys of the City, if any, legally available and specifically set aside for such purpose, to pay the principal of and interest on the Note as the same becomes due.

The City hereby further obligates and binds itself to set aside in the Note Fund, beginning after the date of delivery of this Note immediately upon receipt of the Grants, all proceeds of the Grants received until there has been accumulated in the Note Fund an amount which will be sufficient, together with other moneys of the City, if any, legally available and specifically set aside in the Note Fund for such purpose, to pay the principal of and interest on the Note as the same shall become due.

This Note is issued in fully registered form. Upon surrender to the Note Registrar, this Note is interchangeable for notes in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. This Note is transferable only on the records maintained by the Note Registrar for that purpose upon the surrender of this Note by the registered owner hereof or nominee or his/her duly authorized agent and only if endorsed in the manner provided hereon, and thereupon a new fully registered note 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 Note is registered to be the absolute owner hereof for the purpose of receiving payment of the principal of and interest on this Note and for any and all other purposes whatsoever.

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

IN WITNESS WHEREOF, the City of Homer, Alaska, has caused this Note to be signed on behalf of the City with the facsimile or manual signature of the Mayor, to be attested by the facsimile or manual signature of the Clerk of the City, and the seal of the City to be reproduced or impressed hereon, as of this 10th day of July, 1989.

CITY OF HOMER, ALASKA

By John P. Colburn
Mayor

ATTEST:

Patricia Jean Tolch
Clerk of the City

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This Note is the Note described in the within-referenced Resolution No. 89-69 of the City of Homer, Alaska, and is the State Grant Anticipation Note, 1989A, dated _____ of such City.

CITY OF HOMER, ALASKA
As Note Registrar

By _____
Authorized Officer

Assignment

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within Note and all rights thereunder and does hereby irrevocably constitute and appoint _____, or its successor, Agent to transfer such Note on the records kept by the Note Registrar for the registration thereof, with full power of substitution.

Dated: _____

(Social Security or other tax identification number of assignee)

In the presence of:

(Witness)

(Signature of Registered Owner)

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the note in every particular, without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEE:

Section 12. Execution of the Note. The Note shall be signed on behalf of the City by the manual or facsimile signature of the Mayor, shall be attested by the manual or facsimile signature of the City Clerk and shall have the official seal of the City reproduced or impressed thereon.

Only such Note as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Note Registrar, shall be valid or obligatory for any purpose

or entitled to the benefits of this Resolution. Such Certificate of Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Resolution.

In case either of the officers of the City who shall have executed the Note shall cease to be such officer or officers of the City before the Note so signed shall have been authenticated or delivered by the Note Registrar, or issued by the City, such Note may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Note may also be signed and attested on behalf of the City by such persons as at the actual date of execution of such Note shall be the proper officers of the City although at the original date of such Note any such person shall not have been such officer.

Section 13. Sale of the Note. The City Council hereby accepts the offer of Security Pacific Bank Alaska, N.A., dated July 6, 1989, to purchase the Note under the conditions stated in such offer, and the terms of such offer are hereby in all respects approved, certified and confirmed.

Section 14. Authorization to Officials and Agents. The appropriate City officials, agents and representatives are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Note, and for the proper use and application of the proceeds of sale thereof as provided in this Resolution. The Treasurer is hereby authorized as designated representative of the City to act on its behalf in selling and delivering the Note.

Section 15. Lost or Destroyed Notes. In case the Note shall be lost, stolen or destroyed, the Note Registrar may execute and deliver a new note or notes of like amount, date, and tenor to the registered owner thereof upon the owner's paying the expenses and charges of the Note Registrar in connection therewith and upon his/her filing with the Note Registrar evidence satisfactory to said Note Registrar that such Note or Notes were actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the Note Registrar with indemnity satisfactory to the Note Registrar.

Section 16. Special Designation. The Note is hereby designated qualified tax-exempt obligations for purposes of Section 265(b) of the Internal Revenue Code of 1986.

Section 17. Arbitrage Covenant. The City covenants and agrees with the owner of the Note that it will not use or invest the proceeds of the Note or any other funds or obligations of the City which may be deemed to be proceeds of such Note 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 Note to the original purchasers thereof, would cause the Note to be "arbitrage bonds" as defined in said section and said regulations. The City will comply with the requirements of Section 140 of the Internal Revenue Code of 1986, as amended (or any successor provision thereof applicable to the Note), and the applicable regulations promulgated thereunder throughout the term of the Note.

Section 18. Severability. If any one or more of the covenants or agreements provided in this Resolution to be performed on the part of the City shall be finally declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be separable from the remaining covenants and agreements in this Resolution and shall in no way affect the validity of the other provisions of this Resolution or of the Note.

Section 19. Effective Date. This Resolution shall become effective immediately upon passage and approval as required by law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Homer, Alaska, held this 10th day of July, 1989.

CITY OF HOMER, ALASKA

By *J. P. Carlson*
Mayor

ATTEST:

Paul J. White
City Clerk

CLERK'S CERTIFICATE

I, the undersigned, the duly chosen, qualified and acting Clerk of the City of Homer, Alaska, (the "City"), and keeper of the records of the City Council (herein called the "City Council"), DO HEREBY CERTIFY:

1. That the attached Resolution No. 89-69 (herein called the "Resolution") is a true and correct copy of a resolution of the City, as finally passed and approved at a meeting of the City Council held on the 10th day of July, 1989, and duly recorded in the offices of the City.

2. That said meeting was a regular meeting duly convened and held in all respects in accordance with law, and, to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of the members of the City Council voted in the proper manner for the passage of the Resolution; that all other requirements and proceedings incident to the proper passage of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City this 10th day of July, 1989.

Paul J. Sobel
City Clerk

[S E A L]