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**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terms that are obsolete and conflict with the terms of the financing authorized by this ordinance, and should be repealed.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:

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

50
51 "Bond" means the "Natural Gas Distribution Special Assessment Bond, 2013" of the
52 City, the issuance and sale of which are authorized herein.

53
54 "City" means the City of Homer, a municipal corporation of the State of Alaska,
55 organized as a first class city under Title 29 of the Alaska Statutes.

56
57 "Council" means the Council of the City of Homer, as the general legislative authority of
58 the City, as the same shall be duly and regularly constituted from time to time.

59
60 "District" means the Homer Natural Gas Distribution System Special Assessment District
61 created by Ordinance 13-02.

62
63 "ENSTAR" means ENSTAR Natural Gas Company, a division of Semco Energy, Inc., a
64 Michigan corporation.

65
66 "Guaranty Fund" means the fund of that name created by Section 15.

67
68 "Improvement" means the natural gas distribution system to be constructed in the
69 District.

70
71 "Lender" means the Kenai Peninsula Borough, a municipal corporation of the State of
72 Alaska, organized as a second class borough under Title 29 of the Alaska Statutes.

73
74 "Loan Agreement" means the Loan Agreement between the City and the Lender
75 concerning the Bond.

76
77 "Ordinance" means this Ordinance 13-03(S) of the City.

78
79 "Registered Owner" means the person named as the registered owner of a Bond in the
80 Bond Register. The Lender is the initial Registered Owner.

81
82 "Registrar" means the City Treasurer, or any successor that the City may appoint by
83 resolution.

84
85 "Reserve Fund" means the fund of that name created by Section 14.

86
87 "Sinking Fund" means the fund of that name created by Section 13.

88

89 "Special Assessments" means all special assessments to be levied against real property in
90 the District to pay the costs of the Improvement.
91

92 Section 2 – Authorization of Bond and Purpose of Issuance. For the purpose of providing
93 the funds necessary to pay the costs of designing and constructing the Improvement, to pay
94 interest on the Bond during the construction of the Improvement, the funding of the reserves
95 required herein, and to pay all costs incidental thereto and to the issuance of the Bond, the City
96 shall issue the Bond in a principal amount equal to the aggregate amount of the advances that the
97 Registered Owner makes to the City for such purposes, but not to exceed \$12,700,000.
98

99 Section 3 – Obligation of Bond. The Bond is a special obligation of the City and is
100 payable solely from assessments to be levied against the real property in the District for the
101 Improvement, and funds pledged for the payment of the Bond under this Ordinance. Said
102 assessments shall constitute a sinking fund for the payment of principal of and interest on the
103 Bond. Neither the faith and credit nor the taxing power of the City is pledged for the payment of
104 the Bond.
105

106 Section 4 – Description of Bond. The Bond shall be designated "City of Homer Natural
107 Gas Distribution Special Assessment Bond, 2013," shall be issued in fully registered form, and
108 shall be numbered in the manner and with such additional designation as the Registrar deems
109 necessary for purposes of identification, and may have endorsed thereon such legends or text as
110 may be necessary or appropriate to conform to the rules and regulations of any governmental
111 authority or any usage or requirement of law with respect thereto. The Bond shall be dated as of
112 its delivery date.
113

114 The Bond shall bear interest from its date at a rate of Four Percent (4.0%) per annum, and
115 shall be payable in two payments of interest only on the 1st days of April 2014 and 2015, and ten
116 equal annual installments of principal and interest, commencing on the 1st day of April 2016 and
117 continuing on April 1 of each year thereafter, until April 1, 2025, when the remaining principal
118 balance of the Bond, plus accrued interest, shall be due and payable. Interest will be computed
119 on the basis of a 360-day year consisting of twelve 30-day months.
120

121 Section 5 – Optional Redemption. The Bond shall be subject to optional redemption in
122 whole or in part at any time, at a redemption price equal to the principal amount of the Bond to
123 be redeemed plus accrued interest to the date of redemption.
124

125 Section 6 – Notice of Redemption. Notice of any intended redemption of the Bond shall
126 be given not less than 10 nor more than 45 days prior to the date fixed for redemption by first
127 class mail to the Registered Owner of the Bond at its address as it appears on the Bond Register
128 on the day the notice is mailed. The requirements of this section shall be deemed to be complied
129 with when notice is mailed as herein provided, whether or not it is actually received by the
130 Registered Owner. All official notices of redemption shall be dated and shall state the
131 redemption date and the redemption price.

175 is the single registered Bond entitled \$12,700,000 City of Homer Natural Gas Distribution
176 Special Assessment Bond, 2013.

177
178 THIS BOND IS PAYABLE SOLELY FROM ASSESSMENTS TO BE LEVIED
179 AGAINST THE REAL PROPERTY IN THE CITY OF HOMER NATURAL GAS
180 DISTRIBUTION SPECIAL ASSESSMENT DISTRICT, AND FUNDS PLEDGED FOR THE
181 PAYMENT OF THE BOND UNDER THE ORDINANCE, AND IS NOT A GENERAL
182 OBLIGATION OF THE CITY, AND NEITHER THE FAITH AND CREDIT NOR THE
183 TAXING POWER OF THE CITY IS PLEDGED FOR ITS REPAYMENT.

184
185 IT IS HEREBY CERTIFIED and declared that this Bond is issued pursuant to and in
186 strict compliance with the Constitution and laws of the State of Alaska and the ordinances of the
187 City of Homer, and that all acts, conditions and things required to happen, to be done and to be
188 performed precedent to and on the issuance of this Bond have happened, been done and been
189 performed.

190
191 IN WITNESS WHEREOF, the City of Homer, Alaska, has caused this Bond to be
192 executed by the signature of its Mayor and attested by its Clerk under the seal of the City on this
193 _____ day of March, 2013.

194
195 CITY OF HOMER

196
197
198
199 _____
200 FRANCIE ROBERTS, MAYOR
201 PRO TEMPORE

202 ATTEST:

203
204
205 _____
206 JO JOHNSON, CMC, CITY CLERK

207
208 Section 8 – Execution. The Bond shall be executed in the name of the City by the
209 signature of the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon
210 and attested by the signature of the City Clerk. The execution of the Bond on behalf of the City
211 by persons who at the time of the execution are duly authorized to hold the proper offices shall
212 be valid and sufficient for all purposes, although any such person shall have ceased to hold office
213 at the time of delivery of the Bond or shall not have held office on the date of the Bond.

214
215 Section 9 – Payment of Principal and Interest. The Bond shall be payable in lawful
216 money of the United States of America which at the time of payment is legal tender for the
217 payment of public and private debts. Installments of principal and interest on the Bond shall be

218 payable on the due date in immediately available funds at the office of the Registered Owner in
219 Soldotna, Alaska, or at another location specified at the option of the Registered Owner;
220 provided that the final installment of the principal of the Bond, plus accrued interest, shall be
221 payable upon presentation and surrender of the Bond by the Registered Owner at the office of the
222 Registered Owner in Soldotna, Alaska.

223

224 Section 10 – Registration.

225

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

230

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

237

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

251

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

260

261 Section 12 – Application of Bond Proceeds. The proceeds of the sale of the Bond shall
262 be applied to pay the costs of designing and constructing the Improvement, including the funding
263 of the reserves required herein, and to pay all costs incidental thereto and to the issuance of the
264 Bond, including without limitation the costs of the Lender as provided in the Loan Agreement,
265 and shall be deposited in the appropriate funds or accounts of the City for such purposes.
266

267 Section 13 – Sinking Fund. A special fund of the City designated the "City of Homer
268 Natural Gas Distribution Special Assessment Bond Sinking Fund" is hereby created for the
269 purpose of paying and securing the payment of the Bond. The Sinking Fund shall be held
270 separate and apart from all other funds and accounts of the City and shall be a trust fund for the
271 Registered Owner of the Bond. Payments of principal and interest on assessments levied for the
272 Improvement in the District shall be deposited in the Sinking Fund. Amounts in the Sinking
273 Fund shall be used to pay principal and interest on the Bond, and are hereby pledged for that
274 purpose. Prepayments of assessments shall be applied to prepay the principal of the Bond, and
275 upon any such prepayment the amortization of the principal of the Bond shall be adjusted so that
276 each remaining scheduled payment of principal and interest on the Bond shall be in an equal
277 amount.
278

279 Section 14 – Reserve Fund.
280

281 (a) A special fund of the City designated the "City of Homer Natural Gas Distribution
282 Special Assessment Bond Reserve Fund" is hereby created for the purpose of paying and
283 securing the payment of the Bond, and is hereby pledged for that purpose. The Reserve Fund
284 shall be held separate and apart from all other funds and accounts of the City and shall be a trust
285 fund for the Registered Owner of the Bond. There shall be paid into the Reserve Fund:
286

287 (1) That part of the proceeds of the Bond which is designated for deposit in
288 the Reserve Fund by the Loan Agreement; and
289

290 (2) All monies received from ENSTAR as refunds of main extension
291 advances or free main allowance arising out of new customers connecting to the
292 Improvement; and
293

294 (3) Any Sinking Fund and Guaranty Fund balances remaining after the
295 discharge of the Bond.
296

297 (b) Until the Bond has been discharged, the funds in the Reserve Fund may be used
298 only to pay the difference between the amount of principal and interest due on the Bond and the
299 amount in the Sinking Fund that is available to pay that principal and interest; provided, if the
300 Finance Director determines that the amount of funds available in the Reserve Fund exceeds the
301 amount of the next annual installment of principal and interest due on the Bond, the Finance
302 Director may apply such excess to a prepayment of the Bond.
303

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

309
310 Section 15 – Guaranty Fund. A special fund of the City designated the "City of Homer
311 Natural Gas Distribution Special Assessment Bond Guaranty Fund" is hereby created for the
312 purpose of paying and securing the payment of the Bonds, and is hereby pledged for that
313 purpose. The Guaranty Fund shall be held separate and apart from all other funds and accounts
314 of the City and shall be a trust fund for the Registered Owner of the Bonds. The Council
315 annually shall appropriate to the Guaranty Fund a sum the Council determines to be adequate,
316 with all other available funds, to cover a deficiency in the funds available to pay principal and
317 interest on the Bonds if the reason for the deficiency is nonpayment of assessments when due.
318 Money received from actions taken against property for nonpayment of assessments levied in the
319 District shall be credited to the Guaranty Fund. Amounts in the Guaranty Fund shall be used to
320 pay principal and interest on the Bonds when other funds are not available for that purpose.

321
322 Section 16 – Amendatory and Supplemental Ordinances.

323
324 (a) The Council from time to time and at any time may adopt an Ordinance or
325 Ordinances supplemental hereto, which Ordinance or Ordinances thereafter shall become a part
326 of this Ordinance, for any one or more of the following purposes:

327
328 (1) To add to the covenants and agreements of the City in this Ordinance,
329 other covenants and agreements thereafter to be observed, or to surrender any right or
330 power herein reserved to or conferred upon the City.

331
332 (2) To make such provisions for the purpose of curing any ambiguities or of
333 curing, correcting or supplementing any defective provision contained in this Ordinance
334 or in regard to matters or questions arising under this Ordinance as the Council may deem
335 necessary or desirable and not inconsistent with this Ordinance and which shall not
336 adversely affect the interests of the Registered Owner of the Bond.

337
338 Any such supplemental Ordinance may be adopted without the consent of the Registered
339 Owner of the Bond, notwithstanding any of the provisions of subsection (b) of this section.

340
341 (b) With the consent of the Registered Owners of not less than 60 percent in
342 aggregate principal amount of the Bond at the time outstanding, the Council may adopt an
343 Ordinance or Ordinances supplemental hereto for the purpose of adding any provisions to or
344 changing in any manner or eliminating any of the provisions of this Ordinance or of any
345 supplemental Ordinance; provided, however, that no such supplemental Ordinance shall:

346

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

352
353 (2) Reduce the aforesaid percentage of Registered Owners of the Bond
354 required to approve any such supplemental Ordinance without the consent of the
355 Registered Owners of all of the Bond then outstanding.

356
357 (3) Remove the pledge and lien of this Ordinance on assessments to be levied
358 against the real property in the District, and funds pledged for the payment of the Bond
359 under this Ordinance.

360
361 It shall not be necessary for the consent of the Registered Owner of the Bond under this
362 subsection (b) to approve the particular form of any proposed supplemental Ordinance, but it
363 shall be sufficient if such consent shall approve the substance thereof.

364
365 (c) Upon the adoption of any supplemental Ordinance pursuant to the provisions of
366 this section, this Ordinance shall be deemed to be modified and amended in accordance
367 therewith, and the respective rights, duties and obligations under this Ordinance of the City and
368 the Registered Owner of the Bond shall thereafter be determined, exercised and enforced
369 thereunder, subject in all respects to such modification and amendment, and all the terms and
370 conditions of any such supplemental Ordinance shall be deemed to be part of the terms and
371 conditions of this Ordinance for any and all purposes.

372
373 (d) Any Bond executed and delivered after the adoption of any supplemental
374 Ordinance pursuant to this section may bear a notation as to any matter provided for in the
375 supplemental Ordinance, and if the supplemental Ordinance shall so provide, a new Bond so
376 modified as to conform, in the opinion of the Council, to any modification of this Ordinance
377 contained in any such supplemental Ordinance may be prepared by the City and delivered
378 without cost to the Registered Owner of the Bond then outstanding, upon surrender for
379 cancellation of such Bond in an equal aggregate principal amount.

380
381 Section 17 – Sale of Bond; Loan Agreement. The Bond shall be sold at negotiated sale to
382 the Lender as provided in the Loan Agreement. The City Manager is hereby authorized to
383 execute the Loan Agreement, in substantially the form presented at this meeting, but with such
384 changes, modifications, additions and deletions therein as he shall deem necessary, desirable or
385 appropriate, the execution thereof to constitute conclusive evidence of approval of any and all
386 changes, modifications, additions or deletions therein from the form and content of said
387 document now before this meeting, and from and after the execution and delivery of said
388 document, the City Manager hereby is authorized, empowered and directed to do all acts and
389 things and to execute all documents as may be necessary to carry out and comply with the

390 provisions of the Loan Agreement as executed. Upon the execution of the Loan Agreement, the
391 City shall execute and deliver the Bond to the Borough in the form authorized herein.

392

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

397

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

401

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

409

410 Section 21 – Severability. If any one or more of the provisions of this Ordinance shall be
411 declared by any court of competent jurisdiction to be contrary to law, then such provision shall
412 be null and void and shall be deemed separable from the remaining provisions of this Ordinance
413 and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond.

414

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

416

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

420

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

423

424

CITY OF HOMER

425

426

427

428

FRANCIE ROBERTS, MAYOR
PRO TEMPORE

429

430

431 ATTEST:

432

433

434

435 _____
JO JOHNSON, CMC, CITY CLERK

436

437 YES:

438 NO:

439 ABSTAIN:

440 ABSENT:

441

442 First Reading:

443 Public Hearing:

444 Second Reading:

445 Effective Date:

446

447 Reviewed and approved as to form:

448

449

450

451 _____
Walt E. Wrede, City Manager

452

453

454 Date: _____

Thomas F. Klinkner, City Attorney

Date: _____