

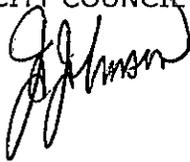
# Office of the City Clerk

Jo Johnson, CMC, City Clerk  
Melissa Jacobsen, CMC, Deputy City Clerk II  
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## **M E M O R A N D U M – AGENDA CHANGES/SUPPLEMENTAL PACKET**

TO: MAYOR HORNADAY AND HOMER CITY COUNCIL  
FROM: JO JOHNSON, CMC, CITY CLERK   
DATE: JULY 23, 2012  
SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

### **PUBLIC HEARINGS**

**Ordinance 12-29**, An Ordinance of the Homer City Council Amending Homer City Code Chapter 15.10.010 to Exclude Oscar Munson Subdivision Lot 34 from the Ocean Drive Loop Special Service District. Lewis/Wythe.

Written public comment.

Page 1

**Ordinance 12-30**, An Ordinance of the City Council of Homer, Alaska Accepting and Appropriating a Legislative Grant in the Amount of \$8,150,000 for Construction of the Natural Gas Pipeline from Anchor Point to Homer and Kachemak City. City Manager.

Grant Agreement  
Corrections from City Attorney Klinkner

Page 5  
Page 27

### **RESOLUTIONS**

**Resolution 12-069**, A Resolution of the City Council of Homer, Alaska, Initiating a Special Assessment District to Provide a Natural Gas Distribution System in the City, and Authorizing the City Manager to Prepare a Proposed Improvement Plan. City Manager.

Written public comment

Page 30

**Resolution 12-070**, A Resolution of the City Council of Homer, Alaska, Approving a Main Extension Contribution in Aid of Construction Agreement Between the City of Homer and Enstar Natural Gas Company for Construction of a Natural Gas Main Extension from Anchor Point through Homer to the Eastern Boundary of Kachemak City and Authorizing the City Manager to Execute the Appropriate Documents. City Manager.

Main Extension Contribution in Aid of Construction Agreement

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AGENDA CHANGES/SUPPLEMENTAL AGENDA  
July 23, 2012

RECOMMENDATION:

Voice consensus to changes under Agenda Approval.

Fiscal Note: N/A

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“WHERE THE LAND ENDS AND THE SEA BEGINS”

To access City Clerk’s Home Page on the Internet: <http://clerk.ci.homer.ak.us>



## Jo Johnson

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**From:** John & Janet Szajkowski [jszajkowski@gmail.com]  
**Sent:** Friday, July 20, 2012 5:42 PM  
**To:** Barbara Howard; Beauregard Burgess; Mary Wythe; Bryan Zak; David Lewis; Francie Roberts; Department Clerk  
**Subject:** Ordinance 12-29

Subject: Ordinance 12-29

Dear Mayor and Council members:

The passage of Ordinance 12-29 would add yet another level of complexity to the seawall story that is already so complicated and so convoluted that most cannot or are not willing to see the simple solution that would end the contention between the City and the property owners. And it [Ordinance 12-29] doesn't come cheaply. As a citizen and taxpayer in general, I ask myself and so should you, what is the cost of this diversion, in terms of City staff time and energy, support personnel time, attorney fees, and Council time?

The most recent attempt at indirectly addressing the seawall situation that passed completely through all City channels was Ordinance 12-49(S), the ODLSSD. Let me offer a simple analogy to Ordinance 12-49(S) and what Ordinance 12-29 could lead to.

Ordinance 12-49(S) is much like the 'self-insured' health care program that the KPB School District offers to its approximately 1000 employees, with one major exception. The healthcare co-payments are all the same, while seawall taxes now vary from \$4818. (Goode) to \$58.72 (Jump) to zero (City Parcel # 17717707), all for the same protection. All teachers, including spouses who are also teachers, are required to pay a co-payment. KPBSD does not allow its employees to opt out of their co-payment to the program, because the healthy spouses who are satisfied with one employee coverage because they don't really need it, would opt out, leaving behind fewer paying employees to contribute to the total health care costs. The not-so-healthy employees would remain in. The natural consequences of this are underfunding of the health care costs (going in the red) or increased co-payments by the employees.

Ordinance 12-29, if passed, would allow one property owner, out of only 12, to opt out. They have without question, and I am glad for them, the most secure portion of the wall. I would be happy to forgo my 214 %, \$3018.46 ODLSSD tax hike to the City, and even relieve the City of the ACOE permit, if the future of wall was that secure. But it isn't. There were problems with it just less than a year ago. You should also note that no one else along the wall has asked to opt out either, because they feel the same way.

If the entire wall was brought to the level of security that property owners asked for in the beginning, 10 years ago, then I believe you would see more, if not all, property owners willing to take on the permit, have the City rescind Ordinance 12-49(S), the ODLSSD, and go on to more constructive activity. This is the simple solution to what has now been a 10 year conflict between the City and the property owners costing both parties hundreds of thousands of dollars.

So while I understand the McNamara's position from their point of view, what I don't understand is why the Council would even consider that option. Right now, the City stands to collect \$2369.68 in special services taxes from the lowest risk property owners in the district. There are no indicators that the ACOE would break up the City's permit into more than one permit. The City would forgo the tax revenue, but still could be held responsible for the wall!

Since I wasn't at the last Council meeting, it is difficult for me to ascertain various parties' positions on Ordinance 12-29 from the newspaper and Council minutes. Certainly the sponsors who introduced the Ordinance and the McNamaras of course, had interest in it, but it raised many concerns that I would like to comment on. I am *quoting* minutes from the Council meeting regarding, Mr. Wrede's statements:

*"Don and Donna Rae presumably would have their own permit as would other property owners."*

Is the Council willing to gamble \$2369.68 of taxpayer dollars on a presumption? What about the 'other property owners', like myself, and the language in the permit that says it can only be transferred when both parties are willing? Unless a true solution is developed, 11 property owners are not willing.

*"Council doesn't have to wait for the COE permit although there may be good arguments for doing that."*

While he doesn't say what those arguments are, maybe legality, maybe lack of precedent, maybe conflicting federal government (ACOE) regulations and policy, maybe litigation. Mr. Wrede doesn't know what the council could be getting into, except that it isn't moving in the direction of solving the problem.

*"There may be impacts for property owners farther down the line."*

As one of the property owners, who knows the history of actions on the part of the City and both the intentional and unintentional consequences, this is a very unnerving statement to hear publically from the City Manager.

*“Going into this we were hoping the property owners would look at the Seawall as an all for one/one for all type of thing.”*

Hoping? Where is there any indication of hoping when so many of Mr. Wrede’s actions have been and continue to be divisive? Ordinance 12-49(S) created two types of seawall owners, those who pay a lot, up to \$4818. and those who pay a little, only \$58.72. This most recent Ordinance 12-29, would now create a third type of seawall owner, one who doesn't pay anything at all. How is this sort of division going to create unity and a long term solution? How does allowing one property owner to be exempt from the ODLSSD create an all for one/one for all type of thing?

*“It is like a piece of property owned in common,.”*

There are only three places I can think of where property is successfully owned in common: 1. A privately and voluntarily owned commune (Twin Oaks Community), 2. Shareholding in lieu of salary, as in a corporation for profit (Facebook start-up maybe), and 3. Government owned property for the good of all people (roads, water/sewer utilities). The first two don't fit and this is why having the City own the wall was the best model for success. That was dissolved with ligation by the City, which resulted in 13 individual property owners (12 private plus the City). The exact opposite of being owned in common.

*“Property owners could be upset with each other and suing each other.”*

This is also a disconcerting and unnerving statement. Imagine this nightmare: a current property owner sells their property and transfers the permit to the new owner. The new property owner, for one reason or another, decides to go back to nature, remove the wall, and restore it to its original condition – the permit language allows the owner to consider this option. Can you imagine the legal dog pile attorneys, including the City's, would have? Now you say, no one in their right mind would do this. At the Homer Seawall Meeting # 2 on June 17, 2010 at KPC in Soldotna, held in order to bring the City's ACOE permit into compliance, Wrede and Meyer were both there, this idea was proposed by more than one of the agencies present. Thankfully it didn't get very far.

*“There are implications,”*

I don't know what this means, but I feel it is important to fully understand any and all implications before voting on anything. It prevents expensive mistakes and embarrassing reversals of position later on.

#### Conclusion

Please don't continue any further with Ordinance 12-29. Assign the City Manager the task of finding a real, acceptable to all parties, well thought-out solution, to this now 10 year problem.

I will be at the Council meeting on Monday, July 23 for questions, and I am always willing to meet and discuss ideas regarding the seawall with each or all of you.

Respectfully,

John Szajkowski

235-8614



DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

Designated Legislative Grant Program  
Grant Agreement

Grant Agreement Number 13-DC-617		Amount of State Funds \$ 328,150,000.00	
Encumbrance Number/AR/Lapse Date / 9096 / 06/30/2017		Project Title South Peninsula Natural Gas Pipeline	
Grantee		Department Contact Person	
Name City of Homer		Name Nancy Pierce	
Street/PO Box 491 E Pioneer Ave		Title Grant Administrator II	
City/State/Zip Homer, AK 99603		Street/PO Box P.O. Box 110809	
Contact Person Walt Wrede, City Manager      wwrede@ci.homer.ak.us		City/State/Zip Juneau, AK 99811	
Phone 907-235-8121	Fax 907-235-3140	Phone 907-465-2023	Fax 907-465-5867

**AGREEMENT**

The Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs (hereinafter 'Department') and City of Homer (hereinafter 'Grantee') agree as set forth herein.

**Section I.** The Department shall pay the Grantee for the performance of the project work under the terms outlined in this agreement. The amount of the payment is based upon project expenses incurred, which are authorized under this Agreement. In no event shall the payment exceed \$8,150,000.00.

**Section II.** The Grantee shall perform all of the work required by this Agreement.

**Section III.** The work to be performed under this agreement begins 7/1/2012 and shall be completed no later than 06/30/2017.

**Section IV.** The agreement consists of this page and the following:

ATTACHMENTS

- Attachment A: Scope of Work
1. Project Description
  2. Project Budget
  3. Project Narrative
  4. Project Management/Reporting
  5. Forms Packet
- Attachment B: Payment Method  
Attachment C: Standard Provisions

APPENDICES

- Appendix A: Audit Regulations  
Appendix B: Audit Compliance Supplement  
Appendix B2: Insurance  
Appendix C: State Laws and Regulations  
Appendix D: Special Requirements and Assurances for Federally Funded Projects (if applicable)  
Appendix E: Site Control  
Appendix F: State Fire Marshal Review

AMENDMENTS: Any fully executed amendments to this Agreement

Grantee	Department
Signature	Signature
Printed Name and Title Walt Wrede, City Manager	Printed Name and Title Jolene Julian, Grants Administrator III
Date	Date

Reviewed by: \_\_\_\_\_

## Attachment A Scope of Work

### 1. Project Description

The purpose of this FY 2013 Designated Legislative Grant in the amount of \$8,150,000.00 [*pursuant to the provisions of AS 37.05.315, SLA 2012, SB 160, Chapter 17, Section 1, Page 25, and Line 5*] is to provide funding to City of Homer for use towards South Peninsula Natural Gas Pipeline. The objective of this project is to construct Phase II of a transmission/trunk line to make natural gas available to the southern Kenai Peninsula.

This project may include, but is not limited to:

- Engineering and design;
- Permitting;
- Construction / Force Account;
- Construction / Contracts; and
- Materials.

No more than five percent (5%) of the total grant award may be reimbursed for Administrative expenses for projects involving equipment purchase or repairs and no more than ten percent (10%) of the total grant award may be reimbursed for Administrative expenses for all other projects. To be reimbursed for eligible administrative costs, expenses must be reported on the Designated Legislative Grant Financial/Progress Report form.

### 2. Project Budget

Cost Category	Total Project Costs
Project Funds	\$ 8,150,000.00
Administration	\$ 0.00
<b>Total Grant Funds</b>	<b>\$ 8,150,000.00</b>

### 3. Budget Narrative

The Grant Funds identified above will be used to complete the project described in the above Project Description.

#### **4. Project Management/Reporting**

This project will be managed by the Grantee.

As a Municipality, signatory authority for execution of the Grant Agreement and subsequent amendments is granted to the Mayor. The Mayor may delegate signatory authority for executing the Grant Agreement and amendments to others within the municipal government via the Signatory Authority Form. The Mayor may also designate financial and progress reporting authority via the Signatory Authority Form. Such delegation is limited to others within the municipal government, unless otherwise approved by the Department.

The Grantee must establish and maintain separate accounting for the use of this Grant. The use of Grant funds in any manner contrary to the terms and conditions of this Grant Agreement may result in the subsequent revocation of the grant and any balance of funds under the grant. It may also result in the Grantee being required to return such amounts to the State.

The Grantee shall submit a Designated Legislative Grant Financial/Progress Report Form (see attached) each month, or quarterly, with the concurrence of the Department, during the life of the Grant Agreement. Grant Financial/Progress Report Forms are due fifteen (15) days after the end of the month or quarter being reported. The report period is the first of the month through the last day of the month. If quarterly reporting is approved, the report period is the first day of the first month through the last day of the third month of the quarter. The final Financial/Progress Reports must be submitted within thirty (30) days following completion of the project. Under no circumstances will the Department release funds to the Grantee unless all required reporting is current.

#### **5. Grant Forms Packet**

The following page, which includes the Designated Legislative Grant Financial/Progress Report Form, is to be used by the Grantee for monthly/quarterly reporting. Additional copies of this form are available from the Department, electronically or in hard copy.

# Designated Legislative Grant Financial/Progress Report

Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs

Grantee: City of Homer	Grant Number: 13-DC-167
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Project Title: South Peninsula Natural Gas Pipeline

Report No:	Reporting Period: <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly	From:	To:
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Cost Category	Authorized Budget	Grant Expenditures This Period	Total Grant Expenditures to Date	Balance of Grant Funds
Project Funds	\$ 8,150,000.00			
Administration	\$ 0.00			
<b>Total This Report</b>	<b>\$ 8,150,000.00</b>			

Current Advance Balance (if any)		
Total Grant Expenditures This Period		Total Grant Award
LESS Advance Recovered This Report (if any)		LESS Total Grant Expenditures to Date
<b>NET REIMBURSEMENT TO GRANTEE</b>		<b>LESS Unrecovered Advance Balance</b>
Advance Balance Remaining (if any)		<b>TOTAL Grant Funds Remaining</b>

Progress Report: Describe activity that supports the expenditures during the period. If no activity has taken place please provide an explanation. Identify any problems you have experienced and/or accomplishments this period. Attach additional pages if necessary.

**Grantee Certification:** I certify that the above information is true and correct, and that expenditures have been made for the purpose of, and in accordance with, applicable grant agreement terms and conditions.

\_\_\_\_\_ Date

**Authorized Signature**

\_\_\_\_\_

**Name and Title**

**DCCED STAFF USE**

Encumbrance No:
Payment Amount:
GA Approval:
DCCED Signature _____ Date _____

## **Attachment B Payment Method**

### **1. Advance/Reimbursement Payment**

Upon full execution of this Grant Agreement, a State treasury warrant in an amount not to exceed 20% of the amount in Section I may be released upon request. Additional State treasury warrants will be released on a reimbursement basis upon receiving and approving a Grantee's financial/progress reports. The Department will reimburse the Grantee for costs incurred during the reporting period, in accordance with this Grant Agreement. The Department will not reimburse without approved financial/progress reports, prepared and submitted by the Grantee on the form provided in Attachment A. Before approving the financial/progress report for payment, the Department may require the Grantee to submit documentation of the costs reported (e.g., vendor billings, signed timesheets, invoices).

If cost reimbursement significantly inhibits the Grantee's ability to implement the project, the Department may advance to the Grantee an amount not to exceed a projected thirty (30) day cash need, or twenty percent (20%) of the amount in Section I, whichever is less.

Before the Department will issue an advance, the Grantee must submit a "Request for Advance Payment" form along with documentation of costs associated with the advance. The "Request for Advance Payment" form can be obtained from the Department electronically or in hard copy.

All advances will be recovered with the Grantee's next Financial/Progress Report form. Should earned payments during the terms of this Grant Agreement be insufficient to recover the full amount of the advance, the Grantee will repay the unrecovered amount to the Department when requested to do so by the Department, or at termination of the Grant Agreement.

### **2. Withholding of Ten Percent (10%)**

The Department may withhold ten percent (10%) of the amount in Section I until the Department determines that the Grantee has satisfactorily completed the terms of this grant agreement, including all required reporting of the project.

## **Attachment C**

### **Standard Provisions**

#### **Article 1. Definition**

"Department" refers to the Department of Commerce, Community and Economic Development with the State of Alaska.

#### **Article 2. Indemnification**

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of the Grant Agreement.

The Grantee, its successors and assigns, will protect, save, and hold harmless the Department and the State of Alaska and their authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Grantee, its subcontractors, assigns, agents, contractors, licenses, invitees, employees, or any person whomever arising out of or in connection with any acts or activities authorized by this Grant Agreement. The Grantee further agrees to defend the Department and the State of Alaska and their authorized agents and employees in any litigation, including payment of any costs or attorney's fees for any claims or actions commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the Department of the State of Alaska or their authorized agents or employees, provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the Department and the State of Alaska and their agents or employees, and (b) the Grantee, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee, or Grantee's agents or employees.

#### **Article 3. Legal Authority**

The Grantee certifies that it possesses legal authority to accept grant funds under the State of Alaska and to execute the project described in this Grant Agreement by signing the Grant Agreement document. The Grantee's relation to the Department and the State of Alaska shall be at all times as an independent Grantee.

#### **Article 4. Waivers**

No conditions or provisions of this Grant Agreement can be waived unless approved by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Grant Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Grant Agreement.

#### **Article 5. Access to Records**

The Department and duly authorized officials of the State of Alaska shall have full access and the right to examine, excerpt, or transcribe any pertinent documents, papers, records, and books of the Grantee, and of persons or organizations with which the Grantee may contract, involving transactions related to the project and this Grant Agreement.

**Article 6. Reports**

The Grantee, at such times and in such forms as the Department may require, shall furnish the Department with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Grant Agreement, including the final close-out report, the costs and obligations incurred in connection therewith, and any other matters covered by this Grant Agreement.

**Article 7. Retention of Records**

The Grantee shall retain financial and other records relating to the performance of this Grant Agreement for a period of six years from the date when the final financial status report is submitted to the Department, or until final resolution of any audit findings, claims, or litigation related to the grant.

**Article 8. Assignability**

The Grantee shall not assign any interest in this Grant Agreement and shall not transfer any interest in the same (whether by assignment or novation).

**Article 9. Financial Management and Accounting**

The Grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.

**Article 10. Program Income**

Program income earned during the award period shall be retained by the Grantee and added to the funds committed to the award and used for the purpose and under the conditions applicable to the use of award funds.

**Article 11. Amendments and Modifications**

The Grantee or the Department may request an amendment or modification of this Grant Agreement. However, such amendment or modification shall not take effect until approved, in writing, by the Department and the Grantee.

**Article 12. Recordkeeping**

The Grantee agrees to keep such records as the Department may require. Such records will include information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. They will also include information pertaining to project performance and efforts to comply with the provisions of the Grant Agreement.

**Article 13. Obligations Regarding Third-Party Relationships**

None of the Work specified in this Grant Agreement shall be contracted by the Grantee without prior approval of the Department. No permission for subcontracting shall create, between the Department or the State of Alaska and the subcontractor, any contract or any relationship.

The Grantee shall remain fully obligated under the provisions of this Grant Agreement notwithstanding its designation of any third party or parties of the undertaking of all or any part of the project described herein. Any subcontractor that is not the Grantee shall be required by the Grantee to comply with all the provisions of this Grant Agreement.

The Grantee shall bind all subcontractors to each and every applicable Grant Agreement provision. Each subcontract for work to be performed with funds granted under this Grant Agreement shall specifically include a provision that the Department and the State of Alaska are not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the subcontracts.

**Article 14. Conflict of Interest**

No officer or employee of the Department; no member, officer, or employee of the Grantee or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement.

The Grantee shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this provision.

**Article 15. Political Activity**

No portion of the funds provided hereinunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

**Article 16. Notices**

The Grantee shall comply with all public notices or notices to individuals required by applicable state and federal laws and shall maintain a record of this compliance.

**Article 17. Prohibition Against Payment of Bonus or Commission**

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval or concurrence under this contract provided, however, that reasonable fees of bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

**Article 18. Termination by Mutual Agreement**

This Grant Agreement may be terminated, in whole or in part, prior to the completion of contract project activities when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. The Department will determine whether an environmental review of the cancellation is required under State and/or Federal law. The parties must agree on the termination conditions, including effective date and the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

**Article 19. Termination for Cause**

If the Grantee fails to comply with the terms of this Grant Agreement, or fails to use the grant for only those purposes set forth herein, the Department may take the following actions:

- A. Suspension – After notice in writing by certified mail to the Grantee, suspend the grant and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate. Response must be received within fifteen (15) days of receipt of the written notice.
- B. Termination – Terminate the grant in whole or in part, at any time before the final grant payment is made. The Department shall promptly notify the Grantee in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Payments made to the Grantee or recoveries by the Department shall be in accordance with the legal rights and liabilities of the parties.

**Article 20. Withdrawal of Funds**

In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant Agreement and prior to normal completion, the Department may terminate the agreement, reduce funding, or re-negotiate subject to those new funding limitations and conditions. A termination under this article shall be implemented under the same conditions as a termination under Article 19 of this Attachment.

**Article 21. Recovery of Funds**

In the event of a default or violation of the terms of the Grant Agreement by the Grantee, the Department may institute actions to recover all or part of the project funds paid to the Grantee. Repayment by the Grantee of grant funds under this recovery provision shall occur within thirty (30) days of demand.

All remedies conferred on the Department by this agreement or any other instrument or agreement are cumulative, not exclusive, and may be exercised concurrently or consecutively at the Department's option.

**Article 22. Disputes**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement that is not disposed of by mutual agreement shall be decided by the Department, which shall reduce its decision to writing and mail, or otherwise furnish a copy thereof, to the Grantee. The decision of the Department shall be final and conclusive.

This "Disputes" clause does not preclude the consideration of questions of law in connection with the decision provided for in the preceding paragraph provided that nothing in the Grant Agreement shall be construed as making final the decisions of any administrative official, representative, or board on a question of law.

**Article 23. Jurisdiction**

This Grant Agreement shall be governed by the laws and statutes of the State of Alaska. The venue of any suit hereunder may be in the Superior Court for the First Judicial District, Juneau, Alaska.

**Article 24. Ownership of Project/Capital Facilities**

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement and, by this grant of funds, does not and will not acquire any ownership interest or title to such property of the Grantee. The Grantee shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the Department and the State of Alaska harmless from any and all causes of action arising from the ownership and operation of the project.

**Article 25. Site Control**

If the grant project involves the occupancy and use of real property, the Grantee assures that it has the legal right to occupy and use such real property for the purposes of the grant, and further that there is legal access to such property.

**Article 26. Insurance**

The Grantee is responsible for obtaining any necessary liability insurance. In addition, the Grantee shall provide and maintain Workers' Compensation Insurance as required by AS 23.30 for all employees engaged in work under this Grant Agreement. The Grantee shall require any contractor to provide and maintain Workers' Compensation Insurance for its employees as required by AS 23.30. The Grantee shall require any contractor hired to work on the project be licensed, bonded and insured for at least the amount of the project and if appropriate provide and maintain Professional Liability Insurance.

**Article 27. Subcontracts for Engineering Services**

In the event that the Grantee subcontracts for engineering services, the Grantee will require that the engineering firm certify that it is authorized to do business in the State of Alaska. In the event that the engineering firm is also the project administrator, the Grantee shall require that the bond or insurance shall be for not less than the amount of the entire project.

**Article 28. Governing law**

This Grant Agreement is governed by the laws of the State of Alaska. The Grantee shall perform all aspects of this project in compliance with the appropriate laws and regulations. It is the responsibility of the Grantee to ensure that all permits required for the construction and operation of this project by the Federal, State, or Local governments have been obtained.

**Article 29. Budget Flexibility**

Notwithstanding the provisions of Article 11, Attachment C, the Grantee may revise the project budget in Attachment A without a formal amendment to this agreement. Such revisions are limited within each line item to a maximum of ten percent (10%) of the line item or \$10,000, whichever is less, over the entire term of this agreement. Such budget revisions shall be limited to changes to existing budget line items. Budget revisions may not be used to increase any budget item for project administrative expenses. Changes to the budget beyond the limits authorized by this provision may only be made by a formal amendment to this agreement.

**Article 30. Equal Employment Opportunity (EEO)**

The Grantee may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood. The Grantee shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.

The Grantee shall state, in all solicitations or advertisements for employees to work on state funded projects, that it is an equal opportunity employer (EEO) and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood.

The Grantee shall include the provisions of this EEO article in every contract relating to this Grant Agreement and shall require the inclusion of these provisions in every agreement entered into by

any of its contractors, so that those provisions will be binding upon each contractor or subcontractor.

**Article 31. Public Purposes**

The Grantee agrees that the project to which this Grant Agreement relates shall be dedicated to public purposes for its useful life. The benefits of the project shall be made available without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood.

If the Grantee is a non-municipal entity and if monies appropriated under this grant constitute the sole or principal funding source for the acquisition of equipment or facilities, the Grantee agrees that in the event a municipal corporation is formed which possesses the power and jurisdiction to provide for such equipment or facilities, the Grantee shall offer, without compensation, to transfer ownership of such equipment or facilities to the municipal corporation.

If the Grantee is a non-profit corporation that dissolves, the assets and liabilities from the grant project are to be distributed according to statutory law, AS 10.20.290-10.20.452.

**Article 32. Operation and Maintenance**

Throughout the life of the project, the Grantee shall be responsible for the operation and maintenance of any facility, equipment, or other items acquired under this grant.

**Article 33. Assurance**

The Grantee shall spend monies awarded under this grant only for the purposes specified in this Grant Agreement.

**Article 34. Current Prevailing Rates of Wage**

Certain grant projects are constrained by the provisions of AS 36. PUBLIC CONTRACTS. To the extent that such provisions apply to the project which is the subject of this Grant Agreement, the Grantee shall pay the current prevailing rates of wage to employees as required by AS 36.05.010. The Grantee also shall require any contractor to pay the current prevailing rates of wage as required by AS 36.05.010.

**Article 35. Severability**

If any provision under this Grant Agreement or its application to any person or circumstance is held invalid by any court of rightful jurisdiction, this invalidity does not affect other provisions of the contract agreement which can be given effect without the invalid provision.

**Article 36. Performance**

The Department's failure to insist upon the strict performance of any provision of the Grant Agreement or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any rights under this Grant Agreement.

**Article 37. Sovereign Immunity**

If the Grantee is an entity which possesses sovereign immunity, it is a requirement of this grant that the Grantee irrevocably waive its sovereign immunity with respect to state enforcement of this

Grant Agreement. The waiver of sovereign immunity, effected by resolution of the entity's governing body, is herein incorporated into this Grant Agreement.

**Article 38. Audit Requirements**

The Grantee shall comply with the audit requirements established by 02 AAC 45.010, set forth in Appendix A of this Grant Agreement.

**Article 39. Close-Out**

The Department will advise the Grantee to initiate close-out procedures when the Department determines, in consultation with the Grantee, that there are no impediments to close-out and that the following criteria have been met or soon will be met:

- A. All costs to be paid with grant funds have been incurred with the exception of close-out costs and any unsettled third-party claims against the Grantee. Costs are incurred when goods and services are received or contract work is performed.
- B. The last required performance report has been submitted. The Grantee's failure to submit a report will not preclude the Department from effecting close-out if it is deemed to be in the State's interest. Any excess grant amount that may be in the Grantee's possession shall be returned by the Grantee in the event of the Grantee's failure to finish or update the report.
- C. Other responsibilities of the Grantee under this Grant Agreement and any close-out agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further State interest in keeping the grant open for the purpose of securing performance.

**Article 40. Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities. Title I of the ADA prohibits discrimination against persons with disabilities in employment and provides that a reasonable accommodation be provided for applicants and employees. Title II of the Act prohibits public agencies from discriminating against individuals with disabilities in the provision of services, programs, or activities. Reasonable accommodation must be made to ensure or allow access to all services, programs, or activities. This section of the Act includes physical access to public facilities and requires that public entities must, if necessary, make modifications to their facilities to remove physical barriers to ensure access by persons with disabilities. All new construction must also be accessible to persons with disabilities. A public entity's subgrantees or contractors must also comply with the ADA provisions. Grantees are responsible for assuring their compliance with the ADA.

## **Appendix A Audit Regulations**

The grantee must comply with the audit requirements of the Alaska Administrative Code set forth in **2 AAC 45.010. AUDIT REQUIREMENTS.**

A copy of the most current 2 AAC 45.010 adopted regulations is available at the State Single Audit website:  
<http://doa.alaska.gov/dof/ssa/index.html>.

## Appendix B Audit Compliance Supplement Grants to Municipalities

### 1. Program Objectives

Authorized and administered under AS 37.05.315 - .325, grants to municipalities are made at the discretion of the Legislature. The grants are designated for use on various capital projects and activities.

### 2. Program Procedures

Once the authorizing legislation becomes effective, a grant agreement specifying the purpose, terms, and conditions of the grant is executed with the municipality.

### 3. Compliance Requirements and Suggested Audit Procedures

#### A. Types of Services Allowed and Unallowed

**Compliance Requirement** Grant funds can be expended for a variety of purposes as provided for in the authorizing legislation and as specified in the grant agreement.

**Suggested Audit Procedure** Review the grant agreement and related records to determine if the funds were expended in accordance with the terms of the agreement.

**Compliance Requirement** The facilities and services provided by the grant must be available for use of the general public.

**Suggested Audit Procedure** Determine whether the facilities and services provided by the grant are available for the use of the general public.

#### B. Eligibility

The auditor is not expected to make tests for recipient eligibility.

#### C. Matching, Level of Effort and/or Earmarking Requirements

**Compliance Requirement** The appropriation or allocation lapses and the municipality must return to the state all grant funds received for construction of a public facility if substantial, ongoing work on the project has not begun within five years of the effective date of the appropriation or allocation.

**Suggested Audit Procedure** Examine financial records, reports, and supporting documentation to determine if substantial, ongoing work on the project has begun within five years of the effective date of the appropriation or allocation. Expenditures alone should not be a determining factor; site visits, photographic documentation, and/or interviews with contractors may be required if ongoing work is in question.

#### D. Reporting Requirements

**Compliance Requirement** The grant agreement will specify the reporting requirements to which the grantee must adhere.

**Suggested Audit Procedures** Examine reports and supporting documentation and verify completeness, accuracy and timeliness of submission. Verify that required approvals were obtained and that expenditures and matching contributions were within award performance period.

#### E. Special Tests and Provisions

**Compliance Requirement** The grant agreement will identify any other compliance requirements to which the recipient is to adhere.

**Suggested Audit Procedures** Review the grant agreement, identify any other applicable compliance provisions, including the "standard provisions," and verify that the requirements were met.

## Appendix B2 Insurance

### Article 1. Insurance

Without limiting contractor's indemnification, it is agreed that the contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a thirty (30) day prior notice of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the contractor's services.

**1.1 Workers' Compensation Insurance:** The contractor shall provide and maintain, for all employees of the contractor engaged in work under this contract, Workers' Compensation Insurance as required by AS 23.30.045. The contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection is not less than \$100,000.00 per occurrence. Where applicable, coverage for all federal acts (i.e. USL & H and Jones Acts) must also be included.

**1.2 Comprehensive (Commercial) General Liability Insurance:** With coverage limits not less than \$300,000.00 combined single limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

**1.3 Comprehensive Automobile Liability Insurance:** Covering all owned, hired, and non-owned vehicles with coverage limits not less than \$100,000.00 per person/\$300,000.00 per occurrence bodily injury and \$50,000.00 property damage.

**1.4 Professional Liability Insurance:** Covering all errors, omissions or negligent acts of the contractor, subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which result in financial loss to the State. Limits required are per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$100,000 per occurrence/annual aggregate
\$100,000 - \$499,999	\$250,000 per occurrence/annual aggregate
\$500,000 - \$999,999	\$500,000 per occurrence/annual aggregate
\$1,000,000 or over	Negotiable - Refer to Risk Management

## Appendix C State Laws and Regulations

### Permits and Environmental Procedures

The Alaska Department of Environmental Conservation (ADEC) regulates all activities in Alaska that might pollute the air, water or soil. There are dozens of ADEC permits related to constructing and operating public buildings. The law requires the following permits, including others designated by the commissioner. The following list is not intended to be all-inclusive.

**Air Emissions Permit—AS 46.14.140, 18 AAC 50.030**  
**Anadromous Fish Protection Permit—AS 41.14.870, 11 AAC 195.010**  
**Authorization for Tidelands Transportation—AS 38.05.035, 11 AAC 51.015**  
**Brine or Other Salt Water Waste Disposal Permit—AS 31.05.030**  
**Burning Permit during Fire Season—AS 41.15.060, 11 AAC 95.410**  
**Coal Development Permit—AS 27.21.030, 11 AAC 85.110**  
**Critical Habitat Area Permit—AS 16.20.510, 05 AAC 95.420**  
**Dam Construction Permit—AS 46.17.040, 11 AAC 93.171**  
**Driveway Permit—AS 19.05.040, 17 AAC 10.020**  
**Encroachment Permit—AS 19.25.200, 17 AAC 10.012**  
**Miscellaneous State Land Use Permit—AS 38.05.035, 11 AAC 96.010**  
**Mineral and Geothermal Prospecting Permits—AS 38.05.181, 11 AAC 82.100**  
**Occupied Tide and Submerged Land—AS 38.05.820, 11 AAC 62.010**  
**Open Burning Permit—AS 46.03.020, 18 AAC 50.065**  
**Permit for Use of Timber or Materials—AS 38.05.110, 11 AAC 71.025**  
**Permit to Appropriate Water—AS 46.15.040, 11 AAC 93.120**  
**Pesticides Permit—AS 46.03.320, 18 AAC 90.300**  
**Preferred Use Permit—AS 46.15.150, 11 AAC 93.240**  
**Right-of-Way and Easement Permits—AS 38.05.850, 11 AAC 58.740**  
**Solid Waste Disposal—AS 46.03.100, 18 AAC 60.200**  
**Special Land Use Permit—AS 38.05.850, 11 AAC 58.210**  
**State Game Refuge Land Permit—AS 16.20.050 - 16.20.060**  
**State Park Incompatible Use Permit—AS 41.21.020, 11 AAC 18.010**  
**Surface Oiling Permit—AS 46.03.740, 18 AAC 75.700**  
**Surface Use Permit—AS 38.05.255, 11 AAC 86.600**  
**Tide and Submerged Lands Prospecting Permit—AS 38.05.250, 11 AAC 62.700**  
**Tidelands Permit—AS 38.05.035**  
**Tidelands Right-of-Way or Easement Permit—AS 38.05.820**  
**Utility Permit—AS 19.25.010, 17 AAC 15.011**  
**Waste Water Disposal Permit—AS 46.03.100, 18 AAC 72.010**  
**Water Well Permit—AS 31.05.030, 11 AAC 93.140**

### **Environmental Conservation—AS 46.03**

This chapter of the Alaska Statutes applies to municipalities and could subject them to enforcement actions instituted by the Alaska Department of Environmental Conservation for air, land and water nuisances, and water and air pollution in a municipality of 1,000 or more, and may establish a local air pollution control program.

### **Municipality Public Facility Operations and Maintenance—AS 37.05.315(c)**

In accepting a grant under AS 37.05.315 for construction of a public facility, a municipality covenants with the State that it will operate and maintain the facility for the practical life of the facility and that the municipality will not look to the State to operate or maintain the facility or pay for its operation or maintenance. This requirement does not apply to a grant for repair or improvement of an existing facility operated or maintained by the State at the time the grant is accepted if the repair or improvement for which the grant is made will not substantially increase the operating or maintenance costs to the State.

### **Restriction on Use—AS 37.05.321**

A grant or earnings from a grant under AS 37.05.315 - 37.05.317 may not be used for the purpose of influencing legislative action. In this section "influencing legislative action" means promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative action but does not include the provision or use of information, statistics, studies, or analyses in written or oral form or format. A grant or earnings from a grant made under AS 37.05.315 - 37.05.317 may not be used for purposes of travel in connection with influencing legislative action unless pursuant to a specific request from a legislator or legislative committee.

### **Hiring Preferences—AS 36.10**

This chapter of the Alaska Statutes applies to grants for public works projects and requires compliance with the hiring preferences under AS 36.10.150 – 36.10.175 for employment generated by the grant.

### **Historic Preservation Act—AS 41.35**

This chapter of the Alaska Statutes applies to public construction of any nature undertaken by the State, or by a governmental agency of the State, or by a private person under contract with or licensed by the State or a governmental agency of the State. The Department of Natural Resources must be notified if the construction is planned for an archaeological site. The department may stop the construction to determine the extent of the historic, prehistoric, or archaeological values.

### **Fire Protection—AS 18.70**

This chapter of the Alaska Statutes requires the Department of Public Safety (the State Fire Marshal) to adopt regulations (currently in the form of Uniform Fire Code, as amended) establishing minimum standards for:

1. Fire detection and suppression equipment;
2. Fire and life safety criteria in commercial, industrial, business, institutional, or other public buildings used for residential purposes containing four or more dwelling units;
3. Any activity in which combustible or explosive materials are stored or handled in commercial quantities;
4. Conditions or activities carried on outside a building described in (2) or (3) likely to cause injury to persons or property.

### **Procurement Preference for State Agricultural and Fisheries Products—AS 29.71.040**

This chapter of the Alaska Statutes applies to municipalities that use state funds to purchase agricultural and fisheries products. The law requires:

1. When agricultural products are purchased, only such products harvested in the state shall be purchased whenever priced no more than seven percent above products harvested outside the state, and of like quality compared with agricultural products harvested outside the state.
2. When fisheries products are purchased, only fisheries products harvested or processed within the jurisdiction of the state shall be purchased whenever priced no more than seven percent above products harvested or processed outside the jurisdiction of the state, available, and of like quality compared with fisheries products harvested or processed outside the jurisdiction of the state.

**Alaska Product Preferences – AS 36.15**

This chapter of the Alaska Statutes applies to projects financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber and manufactured lumber projects originating in this state from local forests shall be used wherever practicable. The law requires the insertion of this clause in calls for bids and in all contracts awarded.

**Appendix D**  
**Special Requirements and Assurances**  
**for Federally Funded Projects**

Federal grant requirements are not applicable to the Designated Legislative Capital Grant program.

## Appendix E Site Control

### 1. Site Control

The Grantee must provide evidence of site control for a project that involves any use of land, including but not limited to, construction, renovation, utility projects, fuel storage, roads, and trails.

As a minimum requirement, the Grantee should obtain a "sufficient interest" that allows the Grantee the right to use and occupy the site for the expected useful life of the building, structure or other improvement. Generally, the interest obtained should be for at least 20 years. A sufficient interest depends upon the nature of the project and the land status of the site. Site control options are identified in Section 2.

For a project planned on land that is controlled by a public agency, the Grantee must obtain whatever authorization for use that is required by the public agency.

### 2. Site Control Options

Below are some examples of documents that may be used to satisfy site control requirements for various community facilities/projects. The terms and conditions contained in each document must be examined to determine adequacy for a specific project.

	Deed	Lease	Easement	Use Permit	License
Community Hall	✓	✓			
Clinic	✓	✓			
Fire Station	✓	✓			
Bulk Fuel Storage	✓	✓			
Dump	✓	✓			
Shop/Storage Building	✓	✓			
Cemetery	✓	✓			
Dock	✓	✓			
Campground	✓	✓			
Generator Building	✓	✓			
Multi-purpose building	✓	✓			
Laundromat	✓	✓			
Water well/Septic	✓	✓		✓	
Village Relocation	✓	✓	✓	✓	
Agriculture Project	✓	✓			
Sewage Lagoon	✓	✓			
Communication Site	✓	✓			
Road (.25")			✓	✓	
Trail (.25")			✓	✓	
Boardwalk			✓	✓	✓
Powerline			✓	✓	✓
Water/Sewer Line			✓	✓	✓
Pipeline			✓	✓	✓

## Appendix F State Fire Marshal Review

### The Plan Review Process

Construction, repair, remodel, addition, or change of occupancy of any building/structure, or installation or change of fuel tanks must be approved by the State Fire Marshal's Office before ANY work is started.

Residential housing that is three-plex or smaller is exempt from this requirement.

Exception: The following jurisdictions have accepted a deferral for total code enforcement and plans should be submitted directly to the city: Anchorage, Juneau, Fairbanks, Kenai, Seward, Kodiak, Sitka, and Soldotna

Plans and specifications regarding the location of the building or structure on the property, area, height, number of stories, occupancy, type of construction, interior finish, exit facilities, electrical systems, mechanical systems, fuel storage tanks and their appurtenances, automatic fire-extinguishing systems, and fire alarm systems must be submitted by the owner or owner's representative to the State Fire Marshal for examination and approval. This review does not address structural considerations or accessibility requirements. Mechanical and electrical review is limited to that which is necessary to confirm compliance with fire and life safety requirements.

A copy of the plan review approval certificate must be posted as required in 13 AAC 55.100(b). It is prohibited to occupy a building for which plans have not been examined and approved.

If any work for which a plan review and approval is required has been started without first obtaining plan review and approval, an additional special processing plan review fee of **\$100** is charged for the first violation. The special processing plan review fee for a subsequent violation by the same person is an additional charge **equal to the amount of the standard plan review fee** for the project.

Authority: AS 18.70.080

Alaska Administrative Code: 13 AAC 50.027



#### 4. Project Management/Reporting

This project will be managed by the Grantee.

Signatory authority for execution of the Grant Agreement and subsequent amendments is granted to the ~~Chief Executive Officer (CEO)~~. The ~~CEO~~ may delegate authority for executing the Grant Agreement and amendments to others within the Grantee's organization via the Signatory Authority Form. The ~~CEO~~ may also designate financial and performance progress reporting authority via the Signatory Authority Form. Such delegation is limited to others within the Grantee's organization unless otherwise approved by the Department.

The Grantee must establish and maintain separate accounting for the use of this Grant. The use of Grant funds in any manner contrary to the terms and conditions of this Grant Agreement may result in the subsequent revocation of the grant and any balance of funds under the grant. It may also result in the Grantee being required to return such amounts to the State.

The Grantee shall submit a Designated Legislative Grant Financial/Progress Report Form (see attached) each month, or quarterly, with the concurrence of the Department, during the life of the Grant Agreement. Grant Financial/Progress Report Forms are due fifteen (15) days after the end of the month or quarter being reported. The report period is the first of the month through the last day of the month. If quarterly reporting is approved, the report period is the first day of the first month through the last day of the third month of the quarter. The final Financial/Progress Reports must be submitted within thirty (30) days following completion of the project. Under no circumstances will the Department release funds to the Grantee unless all required reporting is current.

#### 5. Grant Forms Packet

The following page, which includes the Designated Legislative Grant Financial/Progress Report Form, is to be used by the Grantee for monthly/quarterly reporting. Additional copies of this form are available from the Department, electronically or in hard copy.

**Appendix B**  
**Audit Compliance Supplement**  
**Grants to Named Recipients**

**1. Program Objectives**

Authorized under AS 37.05<sup>315</sup>, these grants <sup>TO MUNICIPALITIES</sup> are made at the discretion of the Legislature. The grants are designated by the Legislature to a specific entity for a specific project or activity to be performed by the named recipient. <sup>FOR USE ON VARIOUS CAPITAL PROJECTS AND ACTIVITIES.</sup>

**2. Program Procedures**

Following enactment of the authorizing legislation, the Department executes a grant agreement with the named recipient, which specifies the project to be undertaken.

**3. Compliance Requirements and Suggested Audit Procedures**

There are no specific grant regulations governing the administration of these grants. All compliance requirements and suggested audit procedures must be based upon specific provisions of the grant agreement.

**A. Types of Services Allowed and Unallowed**

Compliance Requirement Grant funds can be expended for a variety of purposes as provided for in the authorizing legislation and as specified in the grant agreement.

Suggested Audit Procedure Review the grant agreement and related records to determine if the funds were expended in accordance with the terms of the agreement.

**B. Eligibility**

The auditor is not expected to make tests for recipient eligibility.

**C. Matching, Level of Effort and/or Earmarking Requirements**

Compliance Requirement Any matching, level of effort and/or earmarking requirements will be established by the Legislature and identified in the grant agreement. Most grants to named recipients will not require a match.

Suggested Audit Procedure Review the grant agreement, identify any matching, level of effort and/or earmarking requirements, and verify that the requirements were met.

**D. Reporting Requirements**

Compliance Requirements The grant agreement will specify the reporting requirements to which the grantee must adhere.

Suggested Audit Procedures Examine reports and supporting documentation and verify completeness, accuracy and timeliness of submission. Verify that required approvals were obtained and that expenditures and matching contributions were within award performance period.

**E. Special Tests and Provisions**

Compliance Requirement The grant agreement will identify any other compliance requirements to which the recipient is to adhere.

Suggested Audit Procedures Review the grant agreement, identify any other applicable compliance provisions, including the "standard provisions," and verify that the requirements were met.



**Jo Johnson**

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**From:** Robert Mack [ramlift42@gmail.com]  
**Sent:** Saturday, July 21, 2012 10:53 PM  
**To:** Jo Johnson  
**Subject:** gas pipeline

**YES LET'S DO IT!!!!!!! MY WIFE AND I AGREE WITH CITY MGR. WALT WEEDE: WE WANT THE CITY-LED METHOD!! though realizing its not magic, getting gas line this way is more equitable and WILL HELP BUSINESS and the community.**

**do it! robert and donna mack 3141 lake st.**

## MAIN EXTENSION CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT

THIS MAIN EXTENSION CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT is made this \_\_\_ day of July 2012 between ENSTAR Natural Gas Company, a division of SEMCO Energy, Inc. (ENSTAR), whose address is 3000 Spenard Road, Anchorage, Alaska 99503, and the City of Homer (Homer), whose address is 491 E. Pioneer Avenue, Homer, Alaska 99603.

WHEREAS, ENSTAR provides natural gas service subject to its tariff on file with the Regulatory Commission of Alaska. Section 602 of that tariff governs the Company's Main Extension policy and provides, among other things, that the Company's Main Extension agreements must be in writing. Terms which are capitalized in this Agreement are defined either in the Company's tariff or in this Agreement.

WHEREAS, Homer has requested ENSTAR to construct a pipeline from its existing system at Anchor Point southward to serve the communities of Homer and Kachemak City (Homer Extension) in the manner and at the location indicated below, and the parties desire to enter into a Main Extension Agreement that will facilitate the timely completion of the Homer Extension, provide for payment to ENSTAR, and establish certain other terms and conditions related to the construction of the Homer Extension.

NOW THEREFORE, in consideration of the premises, the parties agree as follows:

1. Description of the Homer Extension. The Homer Extension will be a buried plastic pipeline that initially will transport utility grade natural gas from ENSTAR's existing gas system at Anchor Point, through Homer, and terminating at the eastern boundary of Kachemak City. The pipeline from Anchor Point to Homer is expected to consist of an 8-inch plastic main that extends approximately 17.2 miles along a route that first follows the Old Sterling Highway right-of-way, then moves to the New Sterling Highway right-of-way, and then traverses through Homer past the Homer High School. The pipeline from the Homer High School to the East End Road is expected to consist of a 6-inch diameter plastic main that extends approximately 3.5 miles. The final segment of the Homer Extension is expected consist of a 4-inch diameter plastic main that extends approximately 1.6 miles along the East End Road right-of-way to a termination point at the eastern limit of Kachemak City.

Attachment 1 is an overview of the gas facilities to be installed. Attachment 2 is the proposed schedule for the construction of the Homer Extension.

2. Construction Cost and Funding of the Homer Extension. The total construction cost of the Homer Extension will include direct costs, overheads and allowance for funds used during construction (AFUDC), and the current non-binding estimate for total construction cost is \$10,700,000. Homer has obtained from the State of Alaska a grant in the amount of \$8,150,000 (State Grant) that is to be used to partially pay the cost to construct the Homer Extension. The

difference between the actual total construction costs and the State Grant will be recovered in accordance with the Homer Extension Surcharge found at Section 2403 of ENSTAR's tariff. The amounts received from the State Grant and the Homer Surcharge to fund the Homer Extension are non-refundable Contributions in Aid of Construction. ENSTAR agrees to provide Homer with detailed, non-binding cost estimates and construction plans upon request.

3. Payment. Until the State Grant is exhausted, Homer shall make progress payments on the Homer Extension on a time and materials basis, including ENSTAR's administrative and construction overheads at the rates established by State of Alaska Annual Utility Systems Audit for 2012 and 2013 reimbursable construction projects. Payments by Homer under this Agreement shall be treated as a non-refundable contribution in aid of construction.

Immediately following the execution of this Agreement, ENSTAR shall invoice Homer for \$545,000, the estimated cost of preliminary construction activities that will be completed in 2012, supported by a preliminary budget for those activities. Such amount will be paid within 30 days following receipt of ENSTAR's invoice. Upon completion of the preliminary construction activities, ENSTAR shall provide Homer with copies of vendor invoices, employee timesheets, and payroll tax forms required for Homer to support reimbursement of the invoiced amount under the terms of the State Grant.

On approximately the 15th day of each month during which construction activities are performed, ENSTAR will invoice Homer for actual labor costs, direct materials and overhead incurred during the preceding calendar month. Copies of vendor invoices, employee timesheets, and payroll tax forms required for Homer to obtain reimbursement of the invoiced amount under the terms of the State Grant will be included with each billing. Homer shall pay the invoiced amount within 30 days following receipt of ENSTAR's billing and supporting documentation. Any amount outstanding after 30 days will accrue interest at the rate of 10.5 percent per annum. In the event that all or a portion of any invoice is not paid within 45 days from receipt of billing and supporting documentation, ENSTAR may suspend all construction activities until the past due balance has been paid in full.

4. Performance. Following execution of this Agreement, Homer shall provide ENSTAR with written authorization to proceed. Upon receipt, and following payment in advance for preliminary construction activities as provided in Section 3 above, ENSTAR will conduct surveys, acquire permits, easements, and materials, and take other actions necessary to begin the Work.

5. Rights-of Way. ENSTAR will apply for, and Homer will grant ENSTAR, permits to locate its facilities in rights-of-way controlled by Homer in accordance with Homer City Code Chapter 11.24. Homer will grant ENSTAR all easements in property owned by Homer, and will sign all other documents, necessary to permit the completion of the Work. ENSTAR will not be obligated to begin construction until all necessary easements, rights-of way, permits, and other

documents or agency authorizations have been obtained. ENSTAR shall be granted an easement, subject only to such other uses, if any, as are reasonably acceptable to ENSTAR, for pipelines, facilities, and other appurtenances on Homer lands, which easement shall run with the land, be binding on the successors and assigns of the parties, and shall endure for so long as ENSTAR continues to deliver natural gas to or from such facilities.

5. Ownership of Facilities. The main extension, facilities and equipment installed in accordance with this Agreement shall be the property and under the control of ENSTAR.

6. Service Lines. This Agreement does not provide for the connection of service lines from the Homer Extension to Homer public facilities or individual residences or businesses in the Homer area. The cost, terms, and conditions for connection of service lines shall be governed by a separate service line agreement that must be executed before natural gas service can be provided to such facilities, residences or businesses.

7. Waiver of Certain Tariff Provisions. The Homer Extension is a "Feeder Main" under ENSTAR's Main Extension tariff (Section 602f(4)). Because the Homer Extension is being funded in part by State Grant and in part by the Homer Extension Surcharge, Sub-Sections 602f(4)(b)(i) through 602f(4)(b)(iii) and 602f(4)(c) through 602f(4)(d) are waived and not applicable. Customers that are served by the Homer Extension will not be assessed a "Feeder Main Component", nor will they be assigned a portion of the Homer Extension "Feeder Main Advance", as described in Section 602f(4) other than what is provided for in the Homer Extension Surcharge. The "Feeder Main Component" is being fully funded by a combination of the State Grant and the Homer Extension Surcharge, and is not refundable as provided by Subsection 602f(4)(b)(iv).

8. Adoption by Reference of First Supplement. In December 2010 the parties previously entered into a Main Extension Contribution in Aid of Construction Agreement for the construction of a regulator station on the North Fork Road and a main extension to serve the Anchor Point School. As a part of that agreement, the parties entered into a First Supplement to Main Extension Contribution in Aid of Construction Agreement dated December 13, 2010 (First Supplement). The parties hereby adopt by this reference said First Supplement in its entirety, except for the first three recital paragraphs therein, and make said First Supplement, except for such recital paragraphs, a part of this Agreement.

9. Not Agreement for Transportation Service or Gas Supply. This Agreement shall not be construed or interpreted as an agreement for gas transportation service or gas supply, nor as a guarantee of service. Any arrangements for service, including for gas transportation service, shall be made by separate agreement with ENSTAR and shall be subject to the terms and conditions of ENSTAR's tariff.

10. Notice. Notice under this Agreement may be mailed or emailed to the contact person listed below.

City of Homer  
Contact Person: Walt Wrede  
491 East Pioneer Avenue  
Homer, Alaska 99603

ENSTAR Natural Gas Company  
Contact Person: Chet Frost  
P.O. Box 190288  
Anchorage, Alaska 99519-0288

Office Phone: (907) 235-8121  
Cell Phone:  
Email: wwrede@ci.homer.ak.us

Office Phone: (907) 334-7793  
Cell Phone: (907) 830-9065  
Email: chet.frost@enstarnaturalgas.com

11. Entire Agreement. This is the entire Agreement between the parties about the subject matter of this transaction and all prior agreements, understandings and representations, whether oral or written, about this subject matter are merged into and superseded by this written Agreement. It may not be modified except in writing signed by both parties.

12. Binding Effect. This Agreement is binding on and inure to the benefit of the successors, assigns and legal representatives of the parties.

13. Waiver. No failure or delay by any party in exercising any right under this Agreement shall operate as a waiver of that right, nor shall any partial exercise of a right preclude any further exercise of that or any other right. The rights shall be cumulative and not exclude any rights or remedies provided by law.

14. No Warranty. The parties to this Agreement make no representation (except as expressly stated herein) or warranty of any kind or nature, directly or indirectly, express or implied, as to any matter whatsoever, including merchantability or fitness for a particular purpose.

15. Applicable Law. This Agreement shall be construed under the laws of Alaska. Any dispute hereunder will be resolved by the Alaska Superior Court at Anchorage. However, this clause shall not be interpreted to affect the primary jurisdiction of the RCA.

16. Limitation of Liability. Neither ENSTAR nor Homer shall be liable to the other for exemplary, punitive, incidental or consequential damages (including without limitation lost profits or revenues) resulting from or arising out of this Agreement, whether the claim is based in contract, tort, strict liability or any other legal theory or principle.

17. Force Majeure. No delay or failure of performance by ENSTAR or Homer, or the agents, directors, officers, employees and contractors of either, shall constitute a default hereunder or give rise to any claim for damages if and to the extent that such delay or failure is caused by Force Majeure affecting that party's ability to perform. "*Force Majeure Event*" means any event

that directly or indirectly renders a party unable, wholly or in part, to perform or comply with any obligation, covenant or condition in this Agreement if the event, or the adverse effects of the event, is outside of the control of, and could not have been prevented by, the affected party with reasonable foresight, at reasonable cost, and by the exercise of reasonable diligence in good faith, and is not attributable to the negligence or willful misconduct of the affected party. Force Majeure Events include without limitation the following events (to the extent they otherwise satisfy the definition):

- i. act of God, fire, lightning, landslide, earthquake, storm, hurricane, hurricane warning, flood, high water, washout, explosion, or well blowout;
- ii. strike, lockout, or other industrial disturbance, act of the public enemy, war, military operation, blockade, insurrection, riot, epidemic, arrest or restraint by government of people, terrorist act, civil disturbance, or national emergency;
- iii. the inability of the affected Party to acquire, or the delay on the part of the affected Party in acquiring materials, supplies, machinery, equipment, servitudes, right-of-way grants, pipeline shipping capacity, easements, permits or licenses, approvals, or authorizations by regulatory bodies or oil and gas lessors needed to enable the Party to perform;
- iv. breakage of or accident to machinery, equipment, facilities, or lines of pipe, and the repair, maintenance, improvement, replacement, test, or alteration to the machinery, equipment, facilities, or lines of pipe, and the freezing of a well or line of pipe, well blowout, or the partial or entire failure of a Gas well; or
- v. act, order, or requisition of any governmental agency or acting governmental authority, or any governmental law, proration, regulation, or priority.

This Force Majeure provision shall not apply to payment when due of money that is owed by one party to the other under the terms of this Agreement.

18. Independent Entities. ENSTAR and Homer are independent entities and are not the agent, partner or employee of the other.

19. No Third Party Beneficiary. Nothing in this Agreement is intended to benefit any third party not a signatory hereto.

20. Neither Party as Drafter. The parties recognize that this Agreement is the product of the joint efforts of the parties and agree that it shall not be construed against one party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution hereof.

21. Attorney Fees. In the event of any action, or any judicial proceedings, or if the parties agree to arbitration proceedings to resolve any dispute under this Agreement, or to enforce any term of this Agreement, or to protect or preserve any rights under this Agreement, the prevailing party shall be entitled to an award of its actual reasonable costs and actual reasonable attorney fees incurred.

22. Authority. Each person signing this Agreement warrants that he or she has authority to sign the Agreement.

23. Assignment. Neither party shall assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Homer agrees that ENSTAR may assign portions of the Work to qualified subcontractors without the consent of Homer.

24. Additional Terms. The rights and obligations of the parties hereunder are subject to the condition

- that neither federal Davis Bacon nor Alaska 'Little Davis Bacon Wages' apply to this project. Neither party is obligated to continue its performance under this Agreement (except for payment by Homer for costs previously incurred by ENSTAR in accordance with Section 3 above) (i) while a claim is pending before any court or administrative agency of competent jurisdiction that federal Davis Bacon or Alaska 'Little Davis Bacon Wages' apply to this project; or (ii) after a final, non-appealable determination by any court or administrative agency of competent jurisdiction that federal Davis Bacon or Alaska 'Little Davis Bacon Wages' apply to this project.

25. Execution. By signing, Homer acknowledges having read and understood each and every term and condition of this Agreement.

The City of Homer

ENSTAR Natural Gas Company,  
a division of SEMO Energy, Inc.

By: \_\_\_\_\_ By: \_\_\_\_\_

Its: \_\_\_\_\_ Its: \_\_\_\_\_

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

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

**FIRST SUPPLEMENT TO MAIN EXTENSION  
CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT**

THIS FIRST SUPPLEMENT TO MAIN EXTENSION CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT (this "Supplement") is entered into as of December 13, 2010 by and between ENSTAR NATURAL GAS COMPANY, a Division of SEMCO Energy, Inc. ("Company") and the CITY OF HOMER, an Alaska municipal corporation ("Participant").

WHEREAS, the state capital budget for fiscal year 2010 includes an appropriation of \$525,000 ("Appropriation") to Participant for the construction of Anchor Point to Homer natural gas pipeline, and in September 2010 Participant and the State of Alaska ("State") executed a grant agreement ("Grant Agreement") under which the State will transfer the amount of the Appropriation to Participant; and

WHEREAS, the Appropriation is intended to fund natural gas transmission improvements ("Project") that are to be owned and operated by Company, with Company assuming sole responsibility for the construction, operation and maintenance of the improvements; and

WHEREAS, Company and Participant have entered into a Main Extension Contribution in Aid of Construction Agreement dated as of DEC 13, 2010 ("Construction Agreement") to provide for the construction of the Project by Company and Participant's payment to Company of the amount of the Appropriation as a contribution in aid of construction; and

WHEREAS, the Grant Agreement obligates Participant to require its contractors, including Company, to comply with all applicable terms of the Grant Agreement; and

WHEREAS, it is consistent with the parties' intent in entering into the Construction Agreement, and a necessary supplement to the Construction Agreement, that Company assume certain of Participant's obligations to the State under the Grant Agreement regarding the construction, operation, maintenance and ownership of the Project, and that Company indemnify and hold Participant and the State harmless from liability arising therefrom.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Participant agree that the following additional terms, covenants and conditions shall be incorporated into the Construction Agreement:

1. **Definitions.** As used in this Supplement, "Department" refers to the Department of Commerce, Community and Economic Development with the State of Alaska.

2. **Indemnification.** (a) It is understood and agreed that the Construction Agreement is solely for the benefit of the parties to the Construction Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of the Construction Agreement.

(b) Company, its successors and assigns, will protect, save, and hold harmless Participant, the Department and the State of Alaska and their authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of Company, its subcontractors, assigns, agents, contractors, licensees, invitees, employees, or any person whomever arising out of or in connection with any acts or activities authorized by the Construction Agreement. Company further agrees to defend Participant, the Department and the State of Alaska and their authorized agents and employees in any litigation including payment of any costs or attorneys' fees for any claims or actions commenced thereon arising out of or in connection with acts or activities authorized by the Construction Agreement. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of Participant, the Department or the State of Alaska, their authorized agents or employees, or any combination thereof, provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) Participant, the Department and/or the State of Alaska, and their agents or employees, and (b) Company, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Company, or Company's agents or employees.

3. **Compliance with Grant Agreement.** A copy of the Grant Agreement is attached hereto. In its performance under the Construction Agreement, and in its construction, operation, maintenance and ownership of the Project, Company shall comply with all applicable terms of the Grant Agreement, including without limitation the following:

A. **Ownership of Project.** The Department makes no claim to any capital facilities or real property improved or constructed with funds under the Grant Agreement and, by its grant of funds thereunder, does not and will not acquire any ownership interest or title to the Project. Company shall assume all liabilities arising from the ownership and operation of the Project and agrees to hold Participant, the Department and the State of Alaska harmless from any and all causes of action arising from the ownership and operation of the Project.

B. **Operation and Maintenance.** Throughout the life of the Project, Company shall be responsible for the operation and maintenance of any facility, equipment, or other items acquired with funds from the Appropriation. Company covenants with Participant and the State that Company will operate and maintain the Project for the practical life of the Project and that Company will not look to Participant or the State to operate or maintain the Project or pay for its operation or maintenance.

C. **Public Purposes.** Company agrees that the Project shall be dedicated to public purposes (including without limitation the provision of natural gas public utility service) for its useful life. The benefits of the Project shall be made available without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.

D. **Assurance.** Company shall spend funds from the Appropriation only for the purposes specified in the Grant Agreement.

E. **Restriction on Use.** Funds from the Appropriation and earnings on those funds may not be used for the purpose of influencing legislative action. In this section "influencing legislative action" means promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative action but does not include the provision or use of information, statistics, studies, or analyses in written or oral form or format. Funds from the Appropriation and earnings on those funds may not be used for purposes of travel in connection with influencing legislative action unless pursuant to a specific request from a legislator or legislative committee.

F. **Access to Records.** The Department and duly authorized officials of the State shall have full access and the right to examine, excerpt, or transcribe any pertinent documents, papers, records, and books of Company, involving transactions related to the Project and the Grant Agreement.

G. **Conflict of Interest.** No officer or employee of the Department, and no member, officer, or employee of Participant or its designees or agents, who exercises any functions or responsibilities with respect to the Project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the Project.

H. **Equal Employment Opportunity ("EEO").** (i) Company may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood. Company shall post in a conspicuous place, available to employees and applicants for employment, a notice setting out the provisions of this paragraph.

(ii) Company shall state, in all solicitations or advertisements for employees to work on state-funded projects, that it is an equal opportunity employer ("EOE") and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.

(iii) Company shall include the provisions of this EEO article in every contract relating to the Construction Agreement and shall require the inclusion of these provisions in every agreement entered into by any of its contractors, so that those provisions will be binding upon each contractor or subcontractor.

I. **Americans with Disabilities Act.** The Americans with Disabilities Act ("ADA") prohibits discrimination against persons with disabilities. Title I of the ADA prohibits discrimination against persons with disabilities in employment and provides that a reasonable accommodation be provided for applicants and employees. Title II of the Act prohibits public agencies from discriminating against individuals with disabilities in the provision of services, programs, or activities. Reasonable accommodation must be made to ensure or allow access to all services programs, or activities. This section of the Act includes physical access to public facilities and requires that public entities must, if necessary, make modifications to their facilities to remove physical barriers to ensure access by persons with disabilities. All new construction must also be accessible to

persons with disabilities. As a recipient of funds from the Appropriation, Company must also comply with the ADA provisions.

4. **Affirmation of Construction Agreement.** Except as expressly amended herein, all terms and conditions of the Construction Agreement as originally executed shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to Main Extension Contribution in Aid of Construction Agreement to be executed by their duly authorized representatives as of the date first above written.

COMPANY:

ENSTAR NATURAL GAS COMPANY  
a Division of SEMCO Energy, Inc.

By *M. P. Mandtaring*  
*President*

PARTICIPANT:

CITY OF HOMER

*Walt Wrede* *12/13/10*  
Walt Wrede, City Manager



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July 11, 2012

Regulatory Commission of Alaska  
 701 West Eighth Avenue, Suite 300  
 Anchorage, Alaska 99501

Dear Commissioners:

Subject: Tariff Advice Letter 226-4

The tariff filing described below is transmitted to you for filing in compliance with Sections 3 AAC 48.200 – 3 AAC 48.430 of the Alaska Administrative Code:

<u>Tariff Sheet</u>		<u>Cancels Sheet</u>		<u>Schedule or Rule Number</u>
<u>Number</u>	<u>Revision</u>	<u>Number</u>	<u>Revision</u>	
228	Second	228	First	Homer Extension Surcharge

ENSTAR Natural Gas Company (ENSTAR) proposes to revise its Homer Extension Surcharge provision approved by the Commission in Orders U-03-84(7) and U-03-84(13). The revisions to this Surcharge provision are necessary due to: 1) changes in the scope of the Homer Extension, including a change in the project length and cost; 2) an anticipated contribution in aid of construction to partially fund the Extension; and 3) a reduction of the portion of ENSTAR's Homer service area that will be subject to the Surcharge. There is no change to the amount of the Surcharge (\$1 per Mcf or \$0.10 per Ccf),<sup>1</sup> and ENSTAR still expects that the surcharge will continue for approximately 10 years once service commences.<sup>2</sup>

Only new gas sales and gas transportation customers that will be served via the Homer Extension, will be subject to the Homer Extension Surcharge. No current customers will be subject to this Surcharge.

### History

In 2004,<sup>3</sup> the RCA granted ENSTAR's rate proposal for its Homer area customers consisting of ENSTAR's postage stamp rates and a Homer specific line extension surcharge. The Order noted that the \$1.00 per Mcf surcharge

<sup>1</sup> Mcf = Thousand cubic feet, Ccf = hundred cubic feet.

<sup>2</sup> See Attachment A, Development of Line Extension Surcharge.

<sup>3</sup> See Order U-03-84(7), dated March 23, 2004.

Anchorage: 907-277-5551 • Kenai Peninsula Office: 907-262-9334 • Mat-Su Office: 907-376-7979

**All Our ENERGY Goes Into Our Customers**

“...permits a delayed recovery of the contribution customers must make for ENSTAR to build its line extension from Anchor Point to Homer, termed CIAC. This CIAC is normally required to be paid before a customer can receive service under ENSTAR’s current tariff...”<sup>4</sup>

At that time, the line extension was expected to be an 11 mile long, 4-inch plastic line, with an estimated cost of \$3,500,000. Gas for the project was to be supplied from the North Fork Field. ENSTAR proposed to collect the Homer surcharge only until the total actual capital cost associated with the pipeline (including construction costs, rate of return and income taxes) were recovered. ENSTAR estimated that the surcharge would be in place approximately 10 years. Subsequently, ENSTAR’s gas supplier was unable to develop the North Fork Field, and the gas supply contract was canceled. As a result, the line from Anchor Point to Homer was not constructed.

The North Fork Field was acquired by a new producer, and in 2009 ENSTAR entered into a gas supply agreement (GSA) with that producer to provide gas for ENSTAR’s overall system supply beginning in 2011.<sup>5</sup> The GSA was approved by the Commission in Letter Order LO900557. Expansion of the gas transmission system to include construction of a pipeline from Ninilchik to Anchor Point was approved in U-09-107(2). That pipeline was constructed and placed into service in April, 2011.<sup>6</sup>

Subsequently, ENSTAR was approached by Homer community leaders and asked to prepare new estimates for a pipeline extension from Anchor Point to Homer and Kachemak City. ENSTAR’s updated construction cost estimate exceeded \$10,000,000. The Alaska State Legislature was approached for assistance in funding the extension. In May, 2012, Governor Parnell signed a capital budget bill that included a State Grant of \$8,150,000 for Homer’s South Peninsula Natural Gas Pipeline (State Grant), with the understanding that the remaining amount needed for the extension would be funded by the \$1.00 per Mcf Homer Extension Surcharge already in ENSTAR’s tariff.

### Homer Extension

The Homer Extension will be a 22 mile buried plastic pipeline transporting utility grade natural gas from the existing gas system at Anchor Point to and through Homer, terminating at the eastern boundary of Kachemak City. The pipeline from Anchor Point to Homer as now planned will consist of an 8-inch plastic main that extends approximately 17.2 miles along a route that first follows the Old Sterling Highway right-of-way, then the New Sterling Highway

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<sup>4</sup> Ibid, p.7.

<sup>5</sup> See TA 180-4.

<sup>6</sup> See TA 203-4.

right-of-way, and then traverses through Homer past the Homer High School. The pipeline from the Homer High School to East End Road will consist of a 6-inch diameter plastic main that extends approximately 3.5 miles. The final segment of the Homer Extension is expected to consist of a 4-inch diameter plastic main that extends approximately 1.6 miles along the East End Road right-of-way to a termination point at the eastern limit of Kachemak City.

The total construction cost of the Homer Extension, including direct costs, overheads and allowance for funds used during construction (AFUDC), is estimated at \$10,700,000. As noted above, Homer has obtained a State Grant from the State of Alaska that will partially pay the cost to construct the Homer Extension. The difference between the actual total construction costs and the State Grant will be recovered in accordance with the Homer Extension Surcharge. The amounts received from the State Grant and the Homer Surcharge to fund the Homer Extension will be treated as non-refundable Contributions in Aid of Construction for ratemaking purposes.

ENSTAR expects to commence work on the Homer Extension in 2012 by beginning to acquire the necessary permits, easements, and materials and conducting surveys. The majority of the construction is expected to occur in 2013. Gas utility service to Homer is expected to be available in the fall of 2013.

#### **Revisions to the Homer Extension Surcharge Provision**

The Homer Extension Surcharge provision on the proposed Sheet 228 has two significant modifications. The first is to reflect the inclusion of the State Grant, so that the Surcharge is calculated to recover the "Net Total Actual Costs" of the Homer Extension (Total Actual Costs less the State Grant). Second, the portion of ENSTAR's service area subject to the Surcharge<sup>7</sup> is revised to remove areas that will not be served from the Homer Extension because they are or will be served from the existing system. Additional revisions to the provision have been made to enhance clarity.

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<sup>7</sup> Subsection 2403e.

Regulatory Commission of Alaska  
TA 226-4  
Page 4  
July 11, 2012

Effective Date

ENSTAR respectfully requests that the Commission approve the Second Revision of Sheet 228 at the conclusion of the standard notice and review period.

Very truly yours,

ENSTAR Natural Gas Company



Daniel M. Dieckgraeff  
Director, Rates and Regulatory Affairs

Enclosures:

Attachment A, Development of Line Extension Surcharge  
Second Revision of Sheet 228

ENSTAR Natural Gas Company  
Development of Line Extension Surcharge

Attachment A

<b>Assumptions:</b>	Funded by Surcharge	Funded by State Grant	Estimated Total Cost	Debt Common (From U-09-69)	
Cost of Pipeline	\$ 2,547,068	\$ 8,150,000	\$ 10,700,000	1,000,000	2.79%
Mcf Sales	As Indicated			1,697,793	10.95%
Rate of Return	9.25%				13.75%
State Income Tax Rate	9.40%				
Federal Income Tax Rate	35.00%				4.50%

Line Extension Surcharge = \$ 1,000,000

Year	Beginning Balance	Rate of Return @ 9.25%	Income Taxes @ 4.50%	Mcf Sales	Surcharge Receipts	Ending Balance
1	\$ 2,547,068	\$ 57,939	\$ 28,187	89,058	\$ (89,058)	\$ 2,547,068
2	2,631,124	224,086	109,015	249,043	(249,043)	2,631,124
3	2,610,261	226,820	110,345	358,029	(358,029)	2,610,261
4	2,498,231	221,069	107,547	440,646	(440,646)	2,498,231
5	2,292,830	207,332	100,864	513,598	(513,598)	2,292,830
6	2,007,392	186,091	90,531	562,050	(562,050)	2,007,392
7	1,657,440	158,595	77,154	585,701	(585,701)	1,657,440
8	1,236,932	125,254	60,934	606,695	(606,695)	1,236,932
9	747,136	85,860	41,770	617,426	(617,426)	747,136
10		40,482	19,694	618,984	(618,984)	188,328

RCA No. 4 Second  
Cancelling  
First

Sheet No. 228  
Sheet No. 228



**ENSTAR Natural Gas Company**

**§2403 Homer Extension Surcharge**

§2403a The Homer Extension Surcharge is a surcharge applied to all Gas Sales and Transportation Service bills for Gas delivered in the Homer Extension Surcharge Area until the Net Total Actual Costs associated with the Anchor Point to Homer pipeline (the "Homer Extension") are recovered. T  
C  
T  
T

§2403b The Net Total Actual Costs for the Homer Extension includes total net construction costs (direct costs, overheads and AFUDC, less any contributions in aid from the State of Alaska or the City of Homer), rate of return and income taxes. The rate of return used will be the most recent weighted average cost of capital for the Company approved or accepted by the Commission. C  
C  
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§2403c Homer Extension Surcharge \$1.00 per Mcf T  
(\$0.10 Per Ccf) T

§2403d The Utility shall file an annual accounting of the collection of the Surcharge at the same time that it files its annual report to the Commission. T

§2403e The Homer Extension Surcharge Area is that portion of the Company's certificated service area (Area 6) more fully delineated as: C  
C

- Township 5 South, Range 11 West, Sections: 2 - 9 and 17 - 20 C
- Township 5 South, Range 12 West, Sections: 7 - 35 C
- Township 5 South, Range 13 West, Sections: 7 - 36 C
- Township 5 South, Range 14 West, Sections: 13 - 36 C
- Township 5 South, Range 15 West, Sections: Those portions of 3 and 4 South and West of the Anchor River, 5, 8, 9, those portions of 10, 11 and 12 South and West of the Anchor River, 13 - 16, 21-27, and 35 - 36 C  
C
- Township 6 South, Range 12 West, Sections: 4 - 7 C
- Township 6 South, Range 13 West, Sections: 1 - 12, 14 - 23, 26 -29, and 34 - 36 C
- Township 6 South, Range 14 West, Sections: 1 - 17, and 22 - 24 C
- Township 6 South, Range 15 West, Sections: 1 C
- Township 7 South, Range 13 West, Sections: 1 and 2 C

(All the above with reference to the Seward Meridian) C

Tariff Advice No. 226-4

Effective \_\_\_\_\_

Issued By: ENSTAR Natural Gas Company, A Division of SEMCO ENERGY, Inc.

By:   
Daniel M. Dieckgraeff

Title: Director, Rates and Regulatory Affairs



### **Proposed Schedule of Construction – Homer Trunk Line<sup>1</sup>**

July 1, 2012 – October 2012: Permitting and Contract Development, Surveying, Environmental Activity.

October 2012 – February 2012: Permit Processing By Agencies.

January 2013: Contractor Bids Due (Installation/Construction, Boring, and Clearing).

February 2013: Permits Issued.

February 2013: Order Materials

February 2013: Contracts Awarded.

February 2013: Construction May Commence.

March 2013 – May 2013: Bore Roads, Rivers and Wetlands

March 2013 – May 2013: Clearing of Right-of-Ways

April 2013 – May 2013: Install SWPPP BMP's

April 2013 – October 2013: Collection of Service Line and Meter Costs from Customers

May 2013 – November 2013: Trunk Line Construction

May 2013 – October 2013: Start Construction of Main Line and Service Lines

**All Our Energy Goes Into Our Customers**

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<sup>1</sup> The following schedule is an estimate and is non-binding.

