

**NOTICE OF MEETING**

1. CALL TO ORDER/ROLL CALL
2. APPROVAL OF THE AGENDA
3. PUBLIC COMMENTS REGARDING ITEMS ON THE AGENDA
4. RECONSIDERATION
5. APPROVAL OF MINUTES
6. VISITORS
7. STAFF AND COUNCIL REPORT
8. PUBLIC HEARING
9. PENDING BUSINESS
10. NEW BUSINESS
  - A. Selection of chair and vice-chair
  - B. Tasks and timeline (work schedule)
11. INFORMATIONAL MATERIALS
  - A. City of Homer Resolution 10-75 establishing task force p. 1
  - B. Appropriations language, Alaska State Legislature p. 3
  - C. Existing contracts between City of Homer and Enstar Natural Gas Co. p. 5
  - D. Potential sources of financing - initial brainstorm list p. 11
  - E. Utility ordinances from Kenai and Soldotna p. 13
12. COMMENTS OF THE AUDIENCE
13. COMMENTS OF THE CITY STAFF
14. COMMENTS OF THE COUNCIL MEMBER
15. COMMENTS OF THE CHAIR
16. COMMENTS OF THE COMMISSION MEMBERS
17. ADJOURNMENT/NEXT MEETING DAY AND TIME

Next meeting is scheduled for \_\_\_\_\_ in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.



**CITY  
OF HOMER  
HOMER, ALASKA**

City Manager

**RESOLUTION 10-75**

A RESOLUTION OF THE CITY COUNCIL OF HOMER,  
ALASKA, ESTABLISHING THE HOMER NATURAL GAS  
DISTRIBUTION SYSTEM TASK FORCE.

WHEREAS, The grant agreement between the City and the State of Alaska for the natural gas transmission line grant contains legislative intent language which among other things, stipulates that the City prepare a plan for a natural gas distribution system within its municipal boundaries; and

WHEREAS, Memorandum 10-93, adopted on June 28, 2010, contained a recommendation that the Council “establish a task force to help the administration review financing and implementation options for the distribution system and necessary amendments to the local improvement district and utilities code”; and

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby establishes the Homer Natural Gas Distribution System Task Force and authorizes the City Clerk to begin advertising for applicants interested in serving.

BE IT FURTHER RESOLVED that the task force shall have five members, two members of the Homer City Council and three members of the general public; and

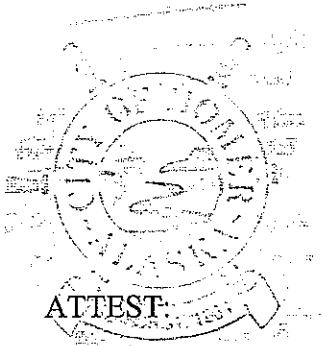
BE IT FURTHER RESOLVED that the three seats reserved for the general public shall be open to all applicants, but City residents with experience in public financing, utilities, utility permitting and regulation, business, and other relevant fields are desirable and encouraged to apply.

BE IT FURTHER RESOLVED the task force shall receive strong staff support which shall at times and as appropriate, include the City Attorney, the City Manager, the Public Works Director, the Finance Director, the City Planner, and other staff members or experts as needed.

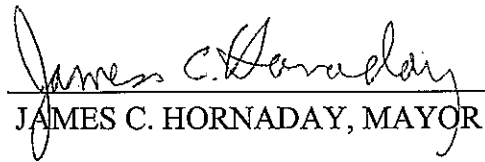
- BE IT FURTHER RESOLVED that the Task Force Scope of Work shall include:
- Review the range of distribution system financing options and make recommendations to the Council.

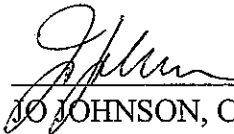
- Review current City Code related to Local Improvement Districts and utility construction practices and permitting (relevant portions of Chapters 11, 13, and 17) and make recommendations regarding necessary code amendments to the Council.
- Function as a “review board” for Enstar’s plans to construct the distribution system.
- Prepare a written plan which addresses the financing, permitting, and construction of a potential gas distribution system within the City limits.

PASSED AND ADOPTED by the Homer City Council this 27<sup>th</sup> day of September, 2010.



CITY OF HOMER

  
JAMES C. HORNADAY, MAYOR

  
JO JOHNSON, CMC, CITY CLERK

Fiscal Note: Unknown at this time. Possible staff overtime and consultant or legal fees.

[http://www.legis.state.ak.us/basis/get\\_fulltext.asp?session=26&bill=SB230](http://www.legis.state.ak.us/basis/get_fulltext.asp?session=26&bill=SB230)

SB 230 is the FY 2011 capital budget bill. The appropriation language for the natural gas line is on page 92 and reads as follows:

Homer -

Anchor Point to Homer Natural Gas Pipeline      \$4,800,000 [NOTE: Governor Parnell vetoed all but \$525,000.]

(HD 33-35)

It is the intent of the legislature that

- (1) the consumer costs for providing natural gas from the state-funded pipeline not be less than the costs to other consumers in the Cook Inlet basin;
- (2) before construction, a determination be made that inclusion of new customers into the Cook Inlet basin natural gas distribution system will not adversely affect existing consumers;
- (3) state funds expended for the pipeline project be used to offset consumer rates for natural gas throughout the Cook Inlet basin; and
- (4) the City of Homer develop a plan
  - (A) for a distribution system that identifies residential users, commercial users, public facility users, and industrial users within its municipal boundary;
  - (B) that provides access to the pipeline along the route of the pipeline for potential users who are outside the municipal boundary; and
  - (C) that provides extension of the pipeline beyond the municipal boundary.





ENSTAR Natural Gas Company  
 3000 Spenard Road  
 P.O. Box 190288  
 Anchorage, Alaska 99519-0288  
 Phone: (907) 277-5551

Area SK  
 Sales # 5196  
 Prior Year ER # \_\_\_\_\_  
 FMA n/a

**MAIN EXTENSION CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT**

This is an Agreement between ENSTAR NATURAL GAS COMPANY, (the "Company") and City of Homer (the "Participant").

The Participant wishes to have constructed the City of Homer Phase I project, a Regulator Station on North Fork road and a natural gas main extension that extends from the Regulator Station and ends at the Anchor Point School.

(Grid Number)

Tract 1 Anchor Point School

(Legal Description)

Sterling Highway

(Street Address)

Anchor Point, Alaska

(City)

("Participant's Facilities").

The Participant has promised the Company to begin to use natural gas within a reasonable time after natural gas service is provided. The Company 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. The term "Main Extension" used in this Agreement means a Gas Distribution Main to which a Participant will have access, which is already constructed or which will be constructed, which was or will be financed in whole or in part by Participant Advances from which a Service Line can be installed to serve the Participant's Facilities. Terms which are capitalized in this Agreement are defined either in the Company's tariff or in this Agreement.

The Company and the Participant agree as follows:

1. The Main Extension is shown in the sketch attached to this Agreement. The Participant will pay the Company a total Advance in Aid of Construction of \$ 525,000 as follows:

(a) \$ 525,000 of the total Advance is a Main Extension Contribution In Aid Of Construction (CIAC) and it will not be refunded to the Participant except as outlined paragraph 5 of this Agreement. The Company has no obligation to construct the Main Extension or connect the Participant's Facilities to the Main Extension until after a reasonable period of time of frost-free ground working conditions.

(b) \$ \_\_\_\_\_ of the total Advance is the Feeder Main Component and is non-refundable. This Main Extension may obtain service from one or more Feeder Mains where all the original costs have not yet been collected. Feeder Main Component(s) will be excluded from any potential refunds outlined in this agreement. Feeder Main(s) relevant to this agreement are:

1) Feeder Main _____	Year: _____	ER/Sales # _____	Amount \$ _____
2) Feeder Main _____	Year: _____	ER/Sales # _____	Amount \$ _____
3) Feeder Main _____	Year: _____	ER/Sales # _____	Amount \$ _____

2. This Agreement does not provide for the connection of the Service Line from the Main Extension to the Participant's Facilities. The cost, terms, and conditions for connection of the Service Line are governed by a separate Service Line Agreement which must be executed before natural gas service can be provided to the Participant's Facilities.

3. The Main Extension CIAC must be recomputed when a new Participant or new consuming Customer who was not a Participant is added in the calendar year of construction and for two (2) full calendar years following (the new consuming Customer will also become a new Participant). The new Participant will be required to pay, as a Main Extension CIAC, a prorated share of the original Main Extension CIAC. The Company will calculate a Free Main Allowance (FMA) using the applicable Standard Load Allowances in effect at the time the new consuming Customer joins the system and in accordance with Section 602c of the Company's tariff.

4. Any new consuming Customers added to the Main Extension after two full calendar years following the calendar year of construction will not be required to pay a prorated share of the original Main Extension Advance.

**5. Refunds:**

(a) Refunds will be calculated for those Participants who made Main Extension CIACs, prorata, equal in total to the amount of CIACs received from new Participants plus the Free Main Allowance from new consuming Customers directly served by the Main Extension during the calendar year of its construction and for two full calendar years following. These refunds will be calculated and paid by the Utility annually by April 1 based upon the prior year's Participant and Customer additions to the Main Extension.

(b) After the two full calendar years following the calendar year of construction, refunds will be calculated for those Participants who have Main Extension Advances on the Main Extension except for Feeder Mains, prorata, equal in total to the amount of the Free Main Allowance for each new consuming Customer directly served by the Main Extension until all of the Main Extension CIAC portion of the Advance has been refunded or until the end of ten full calendar years following the calendar year of construction, whichever occurs earlier. These refunds will be calculated and paid by the Utility quarterly within one month following the end of the calendar quarter based upon the previous calendar quarter's Customer additions to the Main Extension.

(c) After the end of ten full calendar years following the calendar year of construction the entire remaining amount of the CIAC shall become non-refundable.

(d) The Company may offset against any portion, or all, of any Main Extension CIAC, or any refund of a Main Extension CIAC, for any or all outstanding monies due the Company by the Participant.

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(e) This Main Extension CIAC shall bear no interest and in no case may the amount of the refund or the amount totally refunded exceed the amount of the original CIAC.

(f) After April 1st of each year, any Participant with an outstanding Main Extension CIAC may request a report of Customers added to the Main Extension in the preceding calendar year.

(g) Refunds due to the Participant will be mailed to the Participant at the address below the Participant's signature. If the Participant wishes for the refund to be mailed to another address, it is the Participant's obligation to notify the Company in writing directed to ENSTAR Natural Gas Company, Attention: Plant Accountant, P. O. Box 190288, Anchorage, AK 99519-0288.

6. The Participant will grant the Company all easements and rights-of-way and will sign all documents necessary to permit construction of Main Extensions and connection of gas service to the Participant's premises. The Company is not obligated to begin any construction or to permit the Participant access to the Main Extension until all necessary easements, rights-of-way, and other documents have been executed by the Participant.

7. The Participant may not assign the rights and obligations under this Agreement without the written consent of the Company. The Company will not unreasonably withhold its consent but it will not give its consent until (1) the person to whom this Agreement is assigned agrees in writing to the assignment, (2) the person to whom this Agreement is assigned gives the Company a mailing address, and (3) no monies are owed the Company by the assignor.

8. The Main Extension and all related equipment installed in accordance with this Agreement are the property of and under the control of the Company.

9. This Agreement may not be modified except in writing. The Agreement is made in Alaska and shall be construed under the laws of the State of Alaska.

10. Additional Terms:

(a) The State of Alaska has appropriated to Participant a grant in the amount of \$525,000. The grant is to be used to reduce the cost of extending natural gas service to residents of the lower Kenai Peninsula. For that reason, and notwithstanding Sections 3 and Sections 602(e)(2) of Company's Tariff, Participant hereby waives the requirement that additional participants, who are added to the Main Extension during the calendar year of construction and two full calendar years following construction, must pay a prorated share of the original Main Extension Advance. Similarly, notwithstanding Section 5 above and Section 602(e) (3) of Company's Tariff, Participant hereby waives refunds based upon the free main allowance of each new consuming customer that may be directly served by the Main Extension. The waivers stated in this Section 10 shall be reported to the RCA in accordance with Section 602(l) of the Company's Tariff.

(b) Participant shall pay Company the \$525,000 Advance in Aid of Construction as set out in Section 1 above in three installments. Upon completion of each of the following milestones, Company will invoice Participant for the dollar amount associated with each milestone. Company and Participant agree that the first milestone will not be invoiced until Participant has accepted and executed the grant agreement:

1. Completion of detailed engineering and material procurement - \$112,500;
2. Installation of 3,260 feet of 8-inch gas pipeline terminating at Chapman Elementary School - \$112,500; and
3. Construction of Anchor Point pressure reducing station - \$300,000.

Each Company invoice shall be paid in full within thirty (30) days of receipt by Participant.

(c) Notwithstanding the recital language found on page one of this Agreement, the parties reasonably expect that other gas consuming customers, but not Participant, will begin to use natural gas within a reasonable time after natural gas service is provided.

11. The Company reserves the right to cancel this Agreement if, at its sole discretion, the construction required is deemed not feasible. Within thirty days of the date of any such determination the Participant is entitled to a full refund of the CIAC.

12. By signing, Participant acknowledges having read and understood this Agreement and its provisions.

City of Homer  
(Participant Name - PLEASE PRINT)

ENSTAR Natural Gas Company  
BY: M. Pollock-Halberg  
(ENSTAR Officer)

BY: \_\_\_\_\_  
(Signature of Participant, Agent, or Participant's Officer)

DATE: Dec. 4, 2010

\_\_\_\_\_  
(Title or Relationship to Participant)

PARTICIPANT: Please list the name, title and address of each shareholder, owner or partner of your Corporation or business.

DATE: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SSN or Federal Tax I.D. Number: \_\_\_\_\_  
(Optional)

MAIN EXTENSION CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT

012SH0999  
Rev.9/1/99dmd



**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 \_\_, 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 \_\_\_\_\_ ("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. A. [Signature]*  
*President*

PARTICIPANT: CITY OF HOMER

\_\_\_\_\_  
Walt Wrede, City Manager

POSSIBLE FINANCING MECHANISMS FOR A NATURAL GAS DISTRIBUTION SYSTEM IN HOMER  
INITIAL BRAINSTORM LIST

—not in any particular order  
—could be used in combination

- Revenue bonds – assumes that revenues generated from the project would pay back the loan. Would not require a public vote.
- General obligation bonds – secured by the City’s pledge of its full faith, credit, and taxing power. Would require voter approval.
- Property tax (mill rate) increase – would not require a public vote.
- Commercial loan (How would it be paid back?)
- Government loan or grant program; e.g., USDA Rural Development.
- Legislative appropriation



**Soldotna, Alaska, Code of Ordinances >> Title 12 - STREETS, SIDEWALKS AND PUBLIC PLACES  
>> Chapter 12.30 - PERMITS FOR UTILITY USE OF RIGHT-OF-WAY >>**

**Chapter 12.30 - PERMITS FOR UTILITY USE OF RIGHT-OF-WAY**

Sections:

- 12.30.010 - Definitions.
- 12.30.020 - Utility use of right-of-way-permits required.
- 12.30.030 - General utility right-of-way use permit.
- 12.30.040 - Utility construction project permits.
- 12.30.050 - Construction permit requirements.
- 12.30.060 - Standards concerning excavation activity.
- 12.30.070 - Assigned utility locations within the right-of-way.
- 12.30.080 - Relocation of utility facilities within right-of-way.
- 12.30.090 - Costs of utility relocations to be reimbursed by city.
- 12.30.100 - Enforcement.
- 12.30.110 - Liability.

**| 12.30.010 - Definitions.**

The following definitions apply to this chapter:

- A. "City right-of-way" means all public streets, alleys and other public ways within the Soldotna city limits not regulated by others. This definition does not include a utility easement in which a utility has an interest on private property.
- B. "Excavation" means the removal, carrying away, back-filling, tunneling, boring, bulldozing, digging out, leveling, clearing, or moving or earth of soil by manual or mechanical means within a city right-of-way.
- C. "Maintenance" means the upkeep, repair, or improvement work on an existing utility facility which does not expand the area occupied by, or change the location of, the facility.
- D. "Roadway" means an area within the right-of-way which is twenty four feet on each side of the center line of a city right-of-way.

*(Ord. 591 § 1 (part), 1994)*

- E. "Road opening" means the excavation within a road accepted for maintenance by the City of Soldotna.
- F. "Utility" means every corporation, company, individual or association of individuals as defined by AS 42.05.720 that owns, operates, manages or controls any plant, pipeline or system for furnishing electrical service, telephone service, cable television service, natural or manufactured gas service, water service or sewer service to the public for compensation.

**| 12.30.020 - Utility use of right-of-way-permits required.**

- A. After June 1, 1994, a public utility shall not construct any facility in, under or over city right-of-way without first having been granted:
  - 1. A general utility right-of-way use permit as set forth in Section 12.30.030 of this chapter; and,
  - 2. A utility construction project permit for each individual excavation and road opening as set forth in Section 12.30.040 of this chapter.
- B. Utility right-of-way use permits may include reasonable conditions deemed necessary to protect the public health, safety and welfare and the interests of the city.
- C. Normal maintenance of utility facilities within a right-of-way shall not require a separated permit under this chapter unless the maintenance work will require an excavation in the roadway, in which case the provisions of Sections 12.30.040 through 12.30.110 of this chapter shall apply in full.

(Ord. 591 § 1 (part), 1994)

### **12.30.030 - General utility right-of-way use permit.**

- A. A general right-of-way use permit shall give written evidence of a utility's written agreement to comply with terms, conditions and requirements of this chapter, including, but not limited to:
1. An indemnification saving the city harmless against any loss of damages due to the negligence of the utility or its agents and employees while constructing, operating and maintaining its plant and equipment in, under or over city right-of-way; and,
  2. Evidence of insurance coverage in form acceptable to the city and in limits not less than two million dollars per occurrence to protect the city and third parties against any loss or damages due to the negligence of the utility or its agents and employees while constructing, operating and maintaining its facilities, in under or over city right-of-way, including hazards from pollution, underground work, explosion, collapse and damage to underground wires, conduits, pipes and fittings.
- B. There is established a five hundred dollar one time lump sum fee for a general utility right-of-way use permit to defray administrative and legal expenses of the city to establish a permit system to govern the location and use of right-of-way by utilities and to formulate and negotiate terms of a general permit.

(Ord. 591 § 1 (part), 1994)

### **12.30.040 - Utility construction project permits.**

- A. After securing a general right-of-way use permit as provided in Section 12.30.030 of this chapter, a utility shall obtain a permit from the public works department for each individual road opening project or excavation within the city right-of-way sought to be performed by the utility.
- B. Application shall be made upon forms provided by the city and shall include, at a minimum, the following information:
1. The name of the utility, its address, phone number and contact person;
  2. Whether any subcontractor may be working for the utility on this project and, if so, the subcontractor's name, address, phone number and contact person;
  3. The name and location of the right-of-way in which the permit is sought;
  4. The type of improvement or facility planned;
  5. Plans, drawings, or sketches showing the length, distance from the right-of-way line, configuration of the improvement, and its relationship to the roadway, if one exists;
  6. The proposed method of location and marking of the boundaries of the right-of-way for construction purposes;
  7. Whether a detour of traffic will be necessary and, if so, a traffic routing narrative statement and plan as required by Section 12.30.060 of this chapter; and
  8. Exceptions to assigned utility locations as prescribed by Section 12.30.070 of this chapter.
- C. A minimum thirty-dollar fee shall be charged for each construction permit to defray costs for review, coordination, and recording of permits. In circumstances when more than one hour is required for review and approval of a permit, an additional fee based upon the actual time and expense to the city shall be charged. Failure to pay permit fees within thirty days of the billing date shall be grounds for revocation of a general utility right-of-way use permit.
- D. The City shall review and grant or deny construction project permits within three working days, if the proposed construction will not deviate from standards, terms, and conditions of this chapter, and within ten working days where the standards, terms and conditions of this chapter are not met.

(Ord. 591 § 1 (part), 1994)

### **12.30.050 - Construction permit requirements.**

The construction permit issued by the city shall conform to the following requirements:

- A. Each permit shall set out a window for construction including specific start and completion dates



and the procedure to be followed for any required road closures during the course of construction. A utility should make every effort to comply with scheduled construction activities, but it shall not be penalized for failing to perform if emergencies or other priority work preempts the schedule. The city should be notified of any proposed schedule changes arising from utility exigencies.

- B. The permit shall establish locations for utility lines or facilities to assure compatibility with all present and anticipated future uses of the right-of-way in which the utility is located. The following general standards shall apply:
1. Utilities should generally be located outside of the existing or anticipated roadway whenever possible.
  2. The location of the utility should allow for the safe and practical maintenance and improvement of both the utility and the roadway.
  3. Surface utility fixtures should be set back from the existing or planned roadway surface and should not be located so to create a visual sight distance or physical obstacle or hazard as required by codes or statutes regarding placement of obstacles in public rights-of-way.
  4. Excavation, backfill, or other disturbance by utility construction or maintenance activities shall be finished in a manner which restores the city right-of-way in accordance with requirements of Section 12.30.060.
- C. Each permit shall require that, prior to beginning the next construction season, the permittee shall provide proof of compliance with the application and permit requirements by filing with the public works department an as-built survey of other similar documentation showing the actual location and configuration of the facility within the right-of-way. Staking sheets and/or project plans indicating the location of installed facilities in relation to property corners and boundaries existing at time of construction will satisfy requirements of this paragraph.
- D. Any application for a construction permit shall include, as an exhibit, proof that the applicant has given notice of the pendency of the application to all other utilities that use the same right-of-way. Another utility using the right-of-way may request specified reasonable notice before a permittee may initiate construction as a condition of the permit.

(Ord. 591 § 1 (part), 1994)

### **12.30.060 - Standards concerning excavation activity.**

Upon securing a permit, all utilities shall abide by the following excavation standards:

- A. Project Coordination. A utility should attempt to coordinate its work with the schedule for other construction work in the same area of the right-of-way. It is the responsibility of the utility to notify persons who may be inconvenienced by work in the right-of-way. Evidence that the applicant has used a "one call locate" service shall be relied upon to give notice to other utilities.
- B. Notice of Damage. A utility which damages plant or equipment of another utility shall immediately notify the affected utility of the damage.
- C. Manner of Excavating. Excavations shall comply with excavation standards promulgated by the Alaska Department of Labor, Occupational Safety and Health Administration. Caution should be taken to avoid injury to pipes, cables, or conduits of another utility in the making of excavations or tunnels.
- D. Pedestrian Ways. If any pedestrian way is blocked, a temporary pedestrian way should be constructed or provided which shall be safe for travel and convenient for users.
- E. Traffic Routing. Where traffic is affected, the utility shall assure that proper traffic signs, detours and safeguards are provided in accordance with the Alaska Traffic Manual and shall notify fire, emergency medical, police and school bus transportation agencies to obtain clearance for the type of detour, time and other limitations imposed.
- F. Closing Roads. When traffic conditions permit, the city may, by written approval, permit the closing of roads to all traffic for a necessary period of time. Such approval may require the utility to give notification to various public agencies and to the general public.
- G. Clearance for Vital Structures. The excavation work shall be performed and conducted in a manner that will enable access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures and other vital equipment.
- H. Restoration of Right-of-way. The right-of-way shall be restored to the grade and condition originally found or to conditions directed by the construction permit. Clearing of vegetation should

be held to a minimum necessary for safe construction and maintenance of the utility. Also, debris and felled timber should be disposed of in a neat and orderly manner. Property pins, gravel, paving or seal coating, ditches, culverts, signs or other public improvements shall be replaced, unless specific direction to the contrary is authorized in writing by the city. Failure to do so after reasonable notice from the city will be cause for the city to accomplish the required work and to collect damages from the utility.

1. **Unpaved Roads.** In the case of unpaved roads, nothing but non-frost susceptible material shall be placed in the excavation and six inches of good type B gravel on the driving surface, except where the existing road itself is not built according to these standards, in which case the excavation should be refilled as nearly as possible as found. The excavation and adjacent areas shall be graded to leave the site in a condition as nearly equal to that found prior to the excavation as is reasonably possible.
  2. **Paved Roads.** In the case of paved roads, twenty six inches of type A materials, six inches of type B material, and two inches of DI leveling course shall be placed in the excavation before overlaying the area with two inches of hot asphaltic concrete.
- I. **Excavation Warranty.** Compaction of back-filled material should be equal to that of the surrounding material. The excavation shall be guaranteed for three years against settling. Any area that has settled within three years shall be promptly rectified at no cost to the city.
  - J. **Clean Up.** As the excavation work progresses, all roads shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris deposited by the utility. All gutters shall be maintained free and unobstructed. Whenever a gutter crosses an intersection street, an adequate waterway shall be provided and maintained at all times. All clean up operations shall be accomplished at the expense of the utility and shall be completed to the reasonable satisfaction of the city.
  - K. **Prompt Completion of Work.** After an excavation is commenced, the work shall be promptly completed and the road restored to its original condition as soon as reasonably possible.
  - L. **Urgent Work.** The city may order emergency work to complete an excavation as soon as possible when required to protect the public health, safety and welfare.
  - M. **Emergency Action.** Nothing in this chapter shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs; provided, that the person making such excavation should make a reasonable effort to notify police dispatch of the location of the emergency excavation. A utility excavating on an emergency basis in a roadway shall apply for a permit on the first working day after such work is commenced.

(Ord. 591 § 1 (part), 1994)

### **12.30.070 - Assigned utility locations within the right-of-way.**

- A. **General Guides.** It is the utility's responsibility to place its facilities within the right-of-way in accordance with this chapter and with a reasonable degree of prudence to enable maximum opportunity for others to use the right-of-way without conflict including adequate allowances for the future construction of roads, storm sewers, sanitary sewers and water mains in the city. Whenever a utility is placing new facilities, relocating existing facilities or replacing existing facilities, it should generally place its facilities in locations as assigned by this section. Exceptions to these guides may be authorized for roads serving low density residential neighborhoods as provided by paragraph 1 of this section. Utilities governed by this section shall be installed underground unless an exception has been granted by the public works department in accordance with Section 12.30.070.I.
- B. **Telephone and Electric Utilities.** Telephone and electric power distribution lines will be placed on the north or west side of the right-of-way within the following distances from the property line:
  - 0' to 6' for right-of-way 60 feet and less
  - 0' to 10' for right-of-way greater than 60 feet
- C. **Gas and Cable Television Utilities.** Gas utility mains and cable television utility distribution lines will be placed on the south or east side of the right-of-way within the following distances from the property line:
  - 0' to 6' for right-of-way 60 feet and less
  - 0' to 10' for right-of-way greater than 60 feet
- D. **Sewer Utilities.** Sanitary sewer and storm sewer utility collection mains will be placed on the north or west side of the right-of-way within the following distances from the property line:
  - 6' to centerline for right-of-way 60' and less

10' to centerline for right-of-way greater than 60'

- E. Water Utilities. Water utility mains will be placed on the south or east side of the right-of-way within the following distances from the property line:
- 6' to centerline for right-of-way 60' and less
  - 10' to centerline for right-of-way greater than 60'
- F. Clearance. On all roads, a minimum of 1.5 feet shall be provided between the traveled way (measured from the outer limits of the sidewalk or shoulder) and obstructions such as utility poles, street lighting poles, fire hydrants and trees. Vertical clearance shall comply with standards as required by codes or statutes regarding placement of obstacles in public rights-of-way.
- G. Burial Depths. Underground lines shall be installed at a minimum depth of thirty six inches, but different depths of burial may be directed by the public works director to accommodate unusual topography or street widths, especially in areas where storm drainage ditches are used along side the roadway.
- H. Incomplete Dedications. If only a portion of the right-of-way has been dedicated, utilities should not be placed along the side of the right-of-way that is likely to become a future road. The utilities that would normally locate on that side of the right-of-way should attempt to acquire sufficient utility easements on the subdivision plat or from adjacent property owners on the appropriate side of the apparent future right-of-way. If a sufficient easement cannot be secured by these measures, a utility may enter into an agreement with the city to specify a different alignment or location that would not require relocation to accommodate the future road construction. As a last alternative, the city may enter into an agreement with a person who has applied for utility service to acquire the remainder of the right-of-way needed for road purposes by powers of eminent domain.
- I. Exceptions to Assigned Utility Locations.
1. Whenever a utility finds it unreasonable to place its facilities within their assigned area, it may apply for an exception on a form provided by the public works department and shall include, at a minimum, the following information:
    - a. A complete explanation as to why the utility is requesting an exception from its assigned location within the right-of-way;
    - b. Additional plans, drawings or sketches necessary to show locations of other existing utilities, problem areas such as rock or wetlands, and locations where the utility is proposing to place new facilities; and
    - c. Evidence that notice of the request for an exception has been given to all other affected utilities.
  2. Subject to appeal, the planning commission, the city manager or his designee has authority to grant an exception to the assigned utility location within the city right-of-way.
  3. Requests for exceptions that become necessary and evident during actual ongoing construction shall be deemed approved if not rejected or modified within four normal working hours after receipt by the public works department. It is a utility's responsibility to inquire if the request for an exception has been approved, rejected or modified. This subsection shall not be interpreted or applied in a manner that would allow for an underground utility to be modified, during ongoing construction, to be installed above ground.

(Ord.591 § 1 (part), 1994)

(Ord. No. 2008-13, §§ 1, 2, 5-28-2008)

### **12.30.080 - Relocation of utility facilities within right-of-way.**

- A. In the event the city or a third party shall lawfully elect to alter or change the grade or location of any road, street, public place or highway and the alteration will conflict with utility facilities, a utility shall relocate its facility, making every effort to accommodate the construction schedule upon reasonable request and notice from the city.
- B. In the following situations involving relocation of a utility's facilities located within the city's right-of-way, the city shall pay in full, as a contribution in aid of construction, the reasonable costs of making such relocation:
1. When the relocation is requested by the city incident to a city project or activity reflected in the city's capital budget;

2. Where the relocation is necessitated by a disturbance to the utility's facilities incident to the city constructing facilities or otherwise working in the right-of-way; or
  3. When the relocation is requested, in writing, by the city for the benefit of a third party incident to a third party constructing facilities or working in the city's right-of-way. This provision does not affect any right of recovery by the city against the third party.
- C. Notwithstanding the foregoing provisions, a utility shall pay the cost of relocating its facilities where the relocation is made necessary by:
1. The failure of the utility to install the facilities in a reasonably prudent manner or in situations when the utility has placed facilities in the right-of-way after June 1, 1994, without approval of a permit or where the as-built location varies from locations approved by the city in a permit;
  2. Repairs by the city necessary either to restore after emergency, or to otherwise reasonably maintain the serviceability of the right-of-way in the condition existing when the utility first constructed its facilities; or
  3. Any other circumstance where the Alaska Public Utilities Commission has determined such payment to be reasonable.

*(Ord. 591 § 1 (part), 1994)*

### **12.30.090 - Costs of utility relocations to be reimbursed by city.**

- A. In situations in which the city shall pay costs of utility relocations, a utility shall be reimbursed for its reasonable cost of the relocation less a "credit" for the value of salvaged materials and betterments resulting from the construction of new facilities.
- B. The city reserves the right to audit books and accounts of a utility to verify its determination of reasonable costs for engineering, right-of-way, easements, labor, material, equipment, overhead, salvaged materials and betterments incidental to utility relocations for a term of six years after substantial completion of the construction project.
- C. Overhead rates for relocation projects reimbursed by the city shall be equivalent to overhead rates approved for relocation projects reimbursed by the Alaska Department of Transportation and Public Facilities. Utility equipment stationed at a project in a "standby capacity" will not be expensed to relocation projects.
- D. The city reserves the right to "offset" for damages and delay claims it may incur for failure of a utility to perform a relocation in a timely or acceptable manner.

*(Ord. 591 § 1 (part), 1994)*

### **12.30.100 - Enforcement.**

- A. A person aggrieved by a determination of the public works director may appeal to the city manager. Decisions of the city manager regarding utility right-of-way permits should be made within five working days and shall be final unless appealed by the applicant to the planning commission within twenty days of posting of the written decision/permit to the address contained in the application. Appeal of the planning commission's determination shall be directly to the Alaska Public Utilities Commission (APUC).
- B. A person aggrieved by a decision of the planning commission on an application for a permit required by this chapter or who believes that fee, term, condition or exception provided under this chapter is unreasonable may appeal the determination of the planning commission to the APUC pursuant to AS 42.05.251.
- C. Unless the APUC provides a different time by rule or regulation, an appeal must be filed within thirty days after the time the decision is mailed or delivered to the person.
- D. Nothing in this section prohibits a mutually acceptable alternative dispute resolution procedure between the city and a utility to avoid unnecessary expense of an appeal to the APUC.

*(Ord. 591 § 1 (part), 1994)*

### **12.30.110 - Liability.**

- A. Nothing in this chapter is intended to impose a duty on the city to inspect any activity or a utility for

purposes of assuring compliance with standards set forth in this chapter; nor does the city warrant to a utility that right-of-way will be preserved in any particular condition.

- B.** Nothing in this chapter shall impose a duty for the city to reimburse a utility for relocation costs for utility plant and equipment placed in the city right-of-way prior to the effective date of APUC Order U-83-74(7) dated January 11, 1985, which invalidated the common law rule in a limited manner.

*(Ord. 591 § 1 (part), 1994)*



**Kenai Municipal Code**

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[Title 18 STREETS AND SIDEWALKS](#)

**Chapter 18.20 EXCAVATIONS IN CITY STREETS BY CONTRACTORS OR UTILITY COMPANIES****18.20.005 Excavations in City streets by contractor or utility companies.**

No utility company, person, or legal entity conducting any excavating activities shall perform any work in or under public lands or public right-of-ways or in any public utility easement within the City without first having been granted:

- (a) A yearly license therefor as set forth in KMC 18.20; and,
- (b) A permit for the individual excavation or street opening contemplated as set forth in KMC 18.25. Said yearly license and street opening permit shall be obtained from the City Public Works Department. "Excavating" means the removal, carrying away, backfilling, tunnelling, bulldozing, digging out, leveling, clearing, or moving of earth or soil by manual or mechanical means. "Contractor" means any individual, utility company, or legal entity conducting any excavating activities.

(Ords. 195, 479, 863)

**18.20.010 Yearly license required.**

Before performing any excavation work as defined above, a contractor so wishing to excavate shall secure from the City Public Works Department a yearly license which shall expire on December 31 in the year in which it is issued. The purpose for requiring this license is to insure the public safety by requiring contractors who wish to excavate in public streets or rights-of-way to fulfill the following requirements. (Ord. 479)

**18.20.020 Bond required.**

Before the issuance of a yearly license, the contractor shall obtain maintenance and construction bond in the amount of \$5,000. Said bond shall be conditioned to indemnify the City for any loss, liability, or damage that may result or accrue from or because of the making, existence, or manner of guarding or construction of any such tunnel or excavation. Such bond shall have as surety a corporation licensed to do business in the state as surety company. In lieu of a corporate bond, a deposit of \$5,000 in a certified check or cashier's check, as security deposit, shall be deposited with the City of Kenai.

(Ord. 479)

**18.20.030 Insurance requirement.**

Before the issuance of a yearly license, the contractor shall provide to the City certificates of insurance evidencing:

- (a) Not less than \$500,000 combined single limit bodily injury and property damage. The applicable certificate of insurance shall clearly indicate that the property damage liability coverage includes hazards from underground work, explosion, collapse and damage to underground wires, conduits, pipes, fittings, mains, sewers and a similar document of indemnity required pursuant to the provisions of KMC 18.20.040 has been incorporated into and made part of the applicable insurance policy.

(b) The Certificate of Insurance provided must contain the following clause (or a similar clause making the same provisions):

In the event of cancellation of the above contract of insurance, the Company or Underwriters will endeavor to give not less than thirty (30) days' advance notice by mail to the party to whom this certificate is issued, at the address herein, which shall be sufficient proof of notice.

If the form of certificate used by the contractor's insurer does not contain a cancellation notice complying with the above, then the above clause must be substituted for the clause in the form.

(c) Workmen's Compensation Insurance in accordance with the laws of the State of Alaska.  
(Ords. 479, 863, 1153)

#### **18.20.040 Indemnity agreement required.**

Before the issuance of a yearly license, the contractor shall execute a document of indemnity saving the City harmless against any loss or damages due to the negligence of the contractor or his agents and employees while the excavation or pipelaying work is being performed. (Ord. 479)

#### **18.20.050 Fee for yearly license.**

In order to defray administrative costs in processing yearly licenses by the City administration, before the issuance of a yearly license the contractor shall pay a yearly license fee of \$25.00. (Ord. 479)

#### **18.20.060 Waiver of bond and insurance.**

The Public Works Director may waive the bonding and insurance requirements herein for contractors performing City projects when equally sufficient bond and insurance protection for the City is provided by the terms of the contract entered into by the City for such project. The bonding, insurance, and indemnity requirements shall be waived for local utility companies where equivalent bonding and insurance having otherwise been provided covering the City. (Ord. 479)

#### **18.20.070 Revocation of yearly license.**

The Public Works Director may serve the Contractor a "Notice to Show Cause" as to why the contractor's yearly license (issued pursuant to this chapter should not be revoked for any of the violations as stated in KMC 18.25.120). A hearing shall be set by the Public Works Department to determine whether such license should be revoked. Should the Public Works Department decide that the yearly license should be revoked, he shall serve a written notice of such decision to the contractor whereupon the contractor shall have ten (10) days in which to appeal the matter in writing to the City Council. The Council shall hear the matter at the next regular meeting where it shall decide whether or not to confirm the Public Works Department's decision. No revocation shall be effective until it has been confirmed by Council or until the ten-day appeal time to Council has elapsed, whereupon the contractor shall cease to perform any excavating hereunder with the City. (Ord. 479)

#### **18.20.080 Suspension of all yearly licenses.**



Because of climatic conditions, the Public Works Director may suspend all yearly licenses for all contractors having been issued licenses when climatic conditions dictate the interest of public safety or to prevent damage to public streets, sidewalks, or utility lines, such excavations should be curtailed. (Ord. 479)

