



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

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Memorandum 21-200

TO: Mayor Castner and Homer City Council
FROM: Rob Dumouchel, City Manager
DATE: November 2, 2021
SUBJECT: Update to Ordinance 21-63

At the October 25th Council meeting, the Council chose to postpone a decision on Ordinance 21-63 to our November meeting. During Committee of the Whole, there was a lot of discussion regarding the ordinance and the type of information that would be required for the Council to get to a point where they would be willing to adopt Ordinance 21-63. Inspired by that discussion, I have created a substitute ordinance which hopefully provides the information the Council was seeking in order to more confidently make a decision on the matter. The substituted memo ultimately does the same thing as the original draft, however, it takes a different pathway to explaining the concept. This memo contains some discussion of the substitute ordinance.

Natural Gas Line Bond and Special Assessment District Origins

Ordinance 13-02 created the Natural Gas Distribution Special Assessment District and Ordinance 13-03(S)(2) authorized the bond for up to \$12,700,000. The City signed an agreement with Enstar in 2013 which defined our contribution in aid of construction. The natural gas distribution system extension was constructed thereafter. Enstar owns, operates, and maintains the main.

Free Main Allowance

Enstar provides a refund to the City called a free main allowance (FMA) when new customers connect to the gas line. FMA is explained in more detail in §602 Enstar's tariff (attached to this document). It is also discussed in section 11 of the agreement between the City and Enstar which was signed in 2013 (also attached). The City will receive FMA payments for ten calendar years following construction.

Year	FMA Payments	Year	FMA Payments
2015	\$1,302,822	2019	\$114,996
2016	\$169,998	2020	\$88,006
2017	\$130,242	2021 (to date)	\$38,961
2018	\$144,120	TOTAL	\$1,989,145

There is not much guidance in the tariff or the City’s contract with Enstar regarding use of FMA. Our agreement has the following language:

*The CITY may distribute the refund entitlements, credit the refund against assessments due the CITY under the HSAD, make special assessment bond payments (related to financing the HSAD), deposit the refund in a fund used as security for said special assessment bonds, **or may make such use of the refund as it determines to be appropriate** (emphasis added).*

To date, the only thing on which the City has spent FMA funds is the payoff of the gas line bond earlier in 2021. \$1,971,808 of the \$2,459,945 payoff came from FMA.

Additional Natural Gas-Related Appropriations

Throughout the life of the gas line, the City has put approximately \$663,119 from non-gas line-related funds into supporting gas line-related purposes. These investments include paying assessments, retrofitting facilities, etc. The table below identifies some of the known appropriations.

Ordinance	General Fund	Utility Fund	Harbor Fund
Ord. 12-46	\$50,165		
Ord 13-19(A)(S)	\$148,319	\$76,461	
Ord 14-07	\$34,089		
Ord 14-22(A)		\$18,562	\$64,708
Ord 15-21	\$68,524		\$202,291
TOTAL	\$301,097	\$95,023	\$266,999

Staff Recommendation: Adopt Ordinance 21-63(S)

Enclosures:

1. Excerpt of Enstar Tariff (§602)
2. 2013 Contract with Enstar
3. Gas Fund 175 Spreadsheet from Finance Department



ENSTAR Natural Gas Company

§602 **Extension of Mains**

§602a **General**

The Utility will construct the facilities necessary to extend a Gas Distribution Main (a “Main Extension”) to any location within its certificated area if the Main Extension is economically feasible and does not cause an unreasonable added cost burden to be borne by existing Customers. With the exception of Feeder Mains described in Section 602f(4) below, each Main Extension must be considered individually for economic feasibility. A Main Extension may involve one or more Participants.

§602b **Costs to Construct**

The Utility will calculate the costs to construct each Main Extension. These costs are based on the facilities necessary to provide service and include Mains, underground service pipes, meters, regulators, etc., as well as the engineering and supervision necessary to design and construct the facilities to meet all legal and safety requirements (including applicable overhead costs).

§602b(1) **Standard Construction Costs**

In calculating the costs to construct a Main Extension, the Utility will use the Standard Construction Costs (Sheet 236) applicable for the year of construction.

On or before May 1 of each year, the Utility will, by tariff advice letter, file the Standard Construction Costs applicable for the next calendar year. The Standard Construction Costs filed will be calculated by using the actual average cost per foot of the construction of two-inch Main Extensions for the previous five years subject to a 10% increase limitation over the previous approved cost per foot. For example, if the approved Standard Construction Cost for a given year (Year 1) is \$20.00 per foot, and the calculated five year average for the next year (Year 2) is \$23.00, the 10% increase limitation would apply and the new revised Standard Construction Cost for the next year (Year 2) would be \$22.00. Further, when computing the Standard Construction Cost for Year 3, the increase limitation will be based upon the revised Standard Construction Cost for Year 2 of \$22.00.

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§602b(2) Charges in Excess of Standard Costs

The Utility may include Charges in Excess of Standard Costs in its calculation of the cost to construct a Main Extension for items which are particularly unique to that Main Extension and which could cause an undue additional cost burden to be borne by existing Customers if only Standard Construction Costs were used. Examples of such unique charges would include, but are not limited to, costs for: the construction of river or stream crossings; construction in swamp, hard rock, or frozen ground areas; construction and permitting in ecologically fragile areas; road bores, open cut crossings, asphalt removal and replacement; or, construction in the right-of-way of a limited access highway. Charges for these items will be based on the Utility's current engineering cost estimates.

§602b(3) Mains in Excess of Two Inches

If the size of the Main Extension that is required for service is in excess of two inches, the cost to construct will be based on the Utility's estimate of actual construction costs. If the actual cost of construction is less than the Utility's estimate, then the difference will be refunded to the Participant.

§602b(4) Cost of System Upgrade

Charges in excess of Standard Construction Costs may include the cost of a system upgrade if it is incidentally the result of a potential Customer's (or Participant's) addition to the system and the potential Customer has a load requirement that is not comparable to those in the area being served by the facilities requiring upgrade.

Pursuant to:
U-99-93(2) / U-99-94(2)

Effective May 16, 2001

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

By:

Daniel M. Dieckgraeff

Title: Vice President, Rates and Planning



ENSTAR Natural Gas Company

§602b(5) Calculation

For Main Extensions utilizing Standard Construction Costs, the costs to construct a Main Extension will be the total of the footage for a two-inch Main necessary to provide service multiplied by the applicable Standard Construction Cost plus any Charges in Excess of Standard Costs. For Main Extensions requiring pipe in excess of two inches, the costs to construct the Main Extension will be calculated in accordance with Section 602b(3) above.

§602c **Free Main Allowance**

In determining if a Main Extension is economically feasible, the Utility will calculate a Free Main Allowance. This allowance is an estimate of the amount of Main expenditure that can be incurred for an “average” Customer of each class without significant adverse effect to the existing Customer base.

§602c(1) Standard Load Allowances

In calculating the Free Main Allowance for a Main Extension, the Utility will use the Standard Load Allowances (Sheet 236) applicable for the year of construction. On or before May 1 of each year, the Utility will, by tariff advice letter, file Standard Load Allowances and supporting documentation applicable for the next calendar year. The Standard Load Allowances will be the actual average embedded plant cost per Customer for each Customer class as of the end of the prior calendar year less that prior calendar year’s cost per Customer (by class) for meter assemblies and Service Lines. These per Customer costs will be calculated using the methodology accepted by the Commission in the Utility’s most recent cost of service study. For computing average loads the Utility will use the following:

		<u>2021</u>	<u>2022</u>		C
<i>§602c(1)(a)</i>	Average G1 load	143	143	Mcf per year	
<i>§602c(1)(b)</i>	Average G2 load	371	373	Mcf per year	I
<i>§602c(1)(c)</i>	Average G3 load	1,169	1,173	Mcf per year	I
<i>§602c(1)(d)</i>	Average G4 load	7,370	7,408	Mcf per year	I

RCA No. 4 First Revision
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§602c(2) Calculation

The Utility will compute a Free Main Allowance for each Participant that is anticipated to connect directly to and begin taking service (thereby becoming a consuming Customer) from the proposed Main Extension at the time of construction. The allowance is the product of the Participant's estimated permanent annual load multiplied by the applicable Standard Load Allowance in effect.

§602d Evaluation of Economic Feasibility

§602d(1) If the costs to construct a Main Extension as computed in Section 602b above do not exceed the sum of the Free Main Allowance for all Participants anticipated to become consuming Customers on the Main Extension at the time of construction, the Main Extension is considered economically feasible.


§602d(2) If the costs to construct a Main Extension as computed in Section 602b above exceed the total of the Free Main Allowance for all Participants anticipated to become consuming Customers on the Main Extension at the time of construction, the Utility may require an Advance of the cost of the Main Extension above the total of the Free Main Allowances from the Participants.

Tariff Advice No. 221-4

Effective

MAY 14, 2012

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

By: 
Daniel M. Dieckgraeff

Title: Manager, Rates and Regulatory Affairs

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§602e Main Extension Advances

Main Extension Advances may be in the form of a Main Extension Deposit or a Main Extension Contribution in Aid of Construction. The Utility may require a Contribution in Aid of Construction when the estimated total load during the life of the Main Extension is insufficient to avoid an undue cost burden on existing Customers.

§602e(1) Calculation of Initial Advance

The initial Main Extension Advance is calculated by taking the excess of the costs to construct over the total of the Free Main Allowance for all Participants anticipated to become consuming Customers on the Main Extension at the time of construction. This is the total Advance required for the entire Main Extension.

Normally, the total Advance required for the entire Main Extension is divided by the total number of Participants. However, the Participants can agree to unequal individual Advances, as long as the sum of all of the Advances equals the total Advance required for the entire Main Extension. The individual Advances for a Feeder Main are calculated as provided in Section 602f(4) below.

Pursuant to:
U-99-93(2) / U-99-94(2)

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§602e(2) Customer Additions

§602e(2)(a) Any previously paid Main Extension Advances for a completed Main Extension, except a Feeder Main, must be recomputed when a new consuming Customer who was not a Participant in the Main Extension is added in the calendar year of construction and for two full calendar years following. The new consuming Customer will become a Participant and will be required to pay, as a Main Extension Advance, a prorated share of the original Main Extension Advance. The Utility will calculate the new consuming Customer's Free Main Allowance using the applicable Standard Load Allowances in effect at the time the new consuming Customer joins the system.

§602e(2)(b) 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.

§602e(3) Refunds

§602e(3)(a) Refunds will be calculated for those Participants who made Main Extension Advances except for Feeder Mains, prorata, equal in total to the amount of Advances 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.

Pursuant to:
U-99-93(2) / U-99-94(2)

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§602e(3)(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 Advance has been refunded or until the end of ten full calendar years following the calendar year of construction, which ever 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.

§602e(3)(c) After the end of ten full calendar years following the calendar year of construction:

§602e(3)(c)(i) For Main Extension Deposits, the entire remaining Advance shall be refunded by the first of April of the eleventh year.

§602e(3)(c)(ii) For Main Extension Contributions in Aid of Construction, all remaining portions of the Advance become non-refundable.

§602e(3)(d) In no case may the amount of the refund or the amount totally refunded exceed the amount of the original Advance.

§602e(3)(e) After April First of each year, any Participant with an outstanding Main Extension Advance may request a report of Customers added to the Main Extension in the preceding calendar year.

§602e(4) Interest

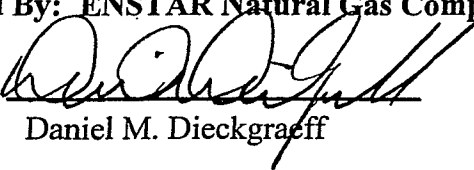
The Utility shall not pay interest on Main Extension Advances.

Pursuant to:
U-99-93(2) / U-99-94(2)

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§602f Types of Main Extension Advances

Main Extension Advances generally fall into one of the following general categories. Each type can be either a Deposit or a Contribution in Aid of Construction.

§602f(1) Standard Main Extension Advance

A standard Main Extension Advance generally involves a group of property owners who have joined together to request gas service to their properties without the help of a Governmental agency. The costs to construct are calculated in accordance with Section 602b above and the total Advance is calculated as provided for in Sections 602c through 602e above.

Pursuant to:
U-99-93(2) / U-99-94(2)

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§602f(2) Developing Subdivisions

Main Extensions into an area that is being subdivided or developed (a "Developing Subdivision") for either residential or commercial construction, which contemplate the installation of an integrated system to serve an entire subdivision or a portion of a subdivision being developed in stages, will be constructed at the sole discretion of the Utility. The agreements for this type of Main Extensions are generally entered into with a developer.

§602f(2)(a) The Utility will calculate the costs to construct in accordance with Section 602b above.

§602f(2)(b) The Utility will calculate any necessary Advances in accordance with Sections 602c through 602e above except that:

§602f(2)(b)(i) The total Advance calculated in accordance with Section 602e(1) (i.e., for the entire project) shall be paid by the developer.

§602f(2)(b)(ii) The refunds provided for in Section 602e(3) shall be calculated for and paid to the developer. If an additional Customer generates a refund of Free Main Allowance only, the refund will be paid on a quarterly basis similar to that outlined in Section 602e(3)(b).

Pursuant to:
U-99-93(2) / U-99-94(2)

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§602f(3) Special Assessment or Local Improvement Districts

Under AS 29.46, local governmental bodies may form a special assessment district, also known as a local improvement district (LID). The Utility may enter into an agreement with a sponsoring government body (SGB) for the purpose of extending natural gas service into a LID.

§602f(3)(a) The Utility will calculate the costs to construct in accordance with Section 602b above.

§602f(3)(b) The Utility will calculate any necessary Advances in accordance with Sections 602c through 602e above, except that:

§602f(3)(b)(i) The total Advance calculated in accordance with Section 602e(1) (i.e., for the entire project) shall be paid by the SGB.

§602f(3)(b)(ii) The refunds provided for in Section 602e(3) shall be calculated for and paid to the SGB. If a new consuming Customer generates a refund of Free Main Allowance only, the refund will be paid on a quarterly basis similar to that outlined in Section 602e(3)(b).

§602f(3)(c) The SGB shall pay the Advance within thirty days of receipt of notification of completion and an invoice for the Advance from the Utility. Any amount of the Advance not paid to the Utility and outstanding after thirty days will be subject to interest.

§602f(3)(d) Annually, the SGB will provide the Utility with a sworn verification that refunds made to SGB for the previous year under Section 602e(3) have been applied on behalf of the individual Participants in accordance with the SGB's ordinances and resolutions that authorized the LID and this Section 602f(3).

Pursuant to:
U-99-93(2) / U-99-94(2)

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By:


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§602f(4) Feeder Mains

A Feeder Main is a Gas Distribution Main that extends through a sparsely inhabited area and links a populated area downstream to the Utility's system supply. It is not economically feasible on its own, and in the view of the Utility, would result in an inequitable apportionment of costs if the Advance necessary were borne exclusively by the Participants directly connecting to the Feeder Main.

To prevent inequity, the Utility will allocate the Feeder Main Advance to the Participants directly connecting to the Feeder Main and to Participants on Main Extensions constructed downstream of the Feeder Main.

§602f(4)(a) The Utility will calculate the costs to construct in accordance with Section 602b above.

§602f(4)(b) The provisions of Section 602e above will generally apply to Feeder Main Extension Advances except as provided below:

§602f(4)(b)(i) The Utility will estimate the number of Participants it expects to connect directly to the Feeder Main, and the number of Participants it expects on Main Extensions constructed downstream of the Feeder Main in the year of construction and for four full calendar years thereafter.

§602f(4)(b)(ii) The total Advance for the Feeder Main calculated in accordance with Section 602e(1) will be divided by the total number of estimated Participants determined in Sub-Section 602f(4)(b)(i) above to determine the "Feeder Main Component".

Pursuant to:
U-99-93(2) / U-99-94(2)

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By:


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§602f(4)(b)(iii) The Feeder Main Component will be collected from each Participant who directly connects to the Feeder Main or participates in any Main Extension constructed downstream of the Feeder Main who relies upon the Feeder Main for gas service until the total Advance is collected.

§602f(4)(b)(iv) The Feeder Main Component will be a non-refundable Contribution in Aid of Construction. There will be no refunds of the Feeder Main Component.

§602f(4)(c) Participants on Main Extensions constructed downstream of the Feeder Main will not be required to have a separate Main Extension Agreement for the Feeder Main Component. The Feeder Main Component will be separately identified and explained in the Agreement for the downstream Main Extension.

§602f(4)(d) A Developing Subdivision or a Local Improvement District Main Extension constructed downstream of the Feeder Main must add to its cost a Feeder Main Component for each of the lots or Participants (as appropriate) involved in such Main Extension.

Pursuant to:
U-99-93(2) / U-99-94(2)

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§602g Participant Construction

The Utility may, at its discretion, allow Participants, or their appointed agents, to perform a portion of the trenching and backfilling of a Main Extension. The Utility will establish in writing, standards of performance, safety, inspection, insurance and bonding which must be complied with prior to commencement and acceptance of any Participant trenching and backfilling.

The Utility will credit the Participant's Main Extension Advance or Contribution in Aid of Construction for the amount of work performed by the Participant and accepted by the Utility. In no case will this credit be in excess of the Utility's estimated cost to trench and backfill the extension less the cost of inspection nor will the credit exceed the amount of the total Main Extension Deposit or Contribution in Aid of Construction for that given extension.

Failure of a Participant, or the Participant's appointed agent, to comply with the standards as set forth by the Utility may result in additional charges by the Utility against the Main Extension cost to construct and the Participant's Main Extension Deposit or Contribution in Aid of Construction. The Utility is not obligated to accept or provide gas service through any facilities that do not meet its construction standards.

Pursuant to:
U-99-93(2) / U-99-94(2)

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§602h Ownership

At all times the Utility shall own, operate and maintain all gas distribution facilities up to the Point of Delivery regardless of whether the facilities have been constructed using Participant supplied trenching and backfilling, Main Extension Deposits, or Contributions in Aid of Construction, or were part of a LID.

§602i Initiation of Line Construction

No line construction or clearing or right-of-way shall be initiated under this section until all required Advances, contributions, Deposits, easements, permits and related documents have been received by the Utility, properly signed and executed, except as provided in Section 602f(3)(c).

§602j Easements and Rights-of-Way

The Participant shall grant the Utility specific easements and rights-of-way necessary for a proper gas Service Connection to that Participant's location. Failure on the part of the Participant to grant such easements and rights-of-way constitutes grounds for the Utility to refuse to construct the Main Extension.

Pursuant to:
U-99-93(2) / U-99-94(2)

Effective **May 16, 2001**

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By:


Daniel M. Dieckgraeff

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ENSTAR Natural Gas Company

§602k Main Extension Agreement

Each Main Extension requiring payment shall be in writing and shall set forth the amount of the Deposit or Contribution required, the terms and conditions of payment, the terms under which refunds will be made and other relevant information. The agreement will also provide that a Participant who has made a Deposit may request an annual report of the consuming Customers added to the Main Extension. The agreement shall be signed by the Utility and by the Participant (or the Participant's authorized representative), or in the case of a LID Main Extension, the SGB's authorized representative.

§602l Waivers

In those unusual circumstances where the Utility believes that application of its Gas Main Extension policy outlined above will result in an inequitable apportionment of costs to one or more Participants (or its existing Customers), the Utility may modify the application of its tariff provision as necessary to remove the inequity by entering into an agreement with the Participant(s) and reporting the agreement to the Commission.

Pursuant to:
U-99-93(2) / U-99-94(2)

Effective May 16, 2001

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

By:


Daniel M. Dieckgraeff

Title: Vice President, Rates and Planning

**NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
CONSTRUCTION AGREEMENT FOR THE CITY OF HOMER NATURAL GAS
DISTRIBUTION SPECIAL ASSESSMENT DISTRICT**

1 THIS AGREEMENT made this 20th day of March, 2013, by and between ENSTAR Natural
2 Gas Company, a division of SEMCO Energy, Inc., whose address is 3000 Spenard Road, P. O. Box
3 190288, Anchorage, Alaska 99519-0288 (hereafter "ENSTAR"), and the City of Homer, whose
4 address is 491 East Pioneer Avenue, Homer, Alaska 99603 (hereafter "CITY").
5

6 WHEREAS, ENSTAR is a gas distribution public utility which provides natural gas service
7 subject to tariff on file with the Regulatory Commission of Alaska and is authorized to provide said
8 service within the CITY, and
9

10 WHEREAS, the CITY is in the process of forming a natural gas distribution special
11 assessment district (hereafter "HSAD") consisting of the lots and tracts within the CITY area as
12 shown on Attachment "A", for the purpose of installing a natural gas distribution system extension
13 (hereafter "System"), and
14

15 WHEREAS, the System, which will be an extension of ENSTAR's existing system, will be
16 constructed and ultimately the responsibility of, and be owned and operated by ENSTAR, its
17 successors or assigns, and,
18

19 WHEREAS, said System must be installed to ENSTAR's specifications, by ENSTAR or by
20 a contractor approved by ENSTAR in order for ENSTAR to connect to the System and to assume
21 full responsibility for the System, and
22

23 WHEREAS, Section 602 of ENSTAR's tariff governs System extensions.
24

25 NOW THEREFORE, in consideration of the premises ENSTAR and the CITY agree as
26 follows:
27

28 1. For a contribution in aid of construction (CIAC) in an amount not to exceed
29 \$12,160,632 calculated in accordance with Section 602 of ENSTAR's tariff and subject to the
30 provisions below, ENSTAR will construct an extension of its natural gas distribution system of
31 approximately 392,000 feet of 2" High Density Polyethylene Pipe to allow service to all lots and
32 tracts within the HSAD as depicted on Attachment "A" to this Agreement. ENSTAR may elect (but
33 shall not be obligated) to construct the System to accommodate future customer load, but all costs to
34 accommodate future load in excess of the CIAC stated above will be borne solely by ENSTAR.
35 This Agreement does not provide for the connection of a service line from the System to the
36 property owner or customer's facilities. The cost, terms and conditions for the connection of a
37 service line is governed by a separate Service Line Agreement between ENSTAR and the individual
38 property owner or customer which must be executed before natural gas can be provided to said
39 facilities. The not to exceed CIAC referenced above is an estimate calculated in accordance with
40 Section 602 of ENSTAR's Tariff. This is a total project cost estimate used to calculate property
41 assessments in the HSAD and for the purposes of seeking project financing. The parties agree to the
42 following provisions with respect to the CIAC.

43 (a) Construction of the System will occur in two Phases. Phase I is planned for
44 the 2013 construction season and Phase II is planned for the 2014 construction season. The not to

**NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
CONSTRUCTION AGREEMENT FOR THE CITY OF HOMER NATURAL GAS
DISTRIBUTION SPECIAL ASSESSMENT DISTRICT**

1 exceed CIAC applies to the total System and to both Phases and construction seasons. ENSTAR
2 agrees that if construction is delayed and cannot be completed until 2015, the not to exceed CIAC
3 and the final CIAC based upon the actual costs described below apply and remain in effect.

4 (b) ENSTAR agrees that if the total project cost exceeds the not to exceed CIAC,
5 it will be responsible for the excess, and will not ask the CITY for an additional contribution.

6 (c) ENSTAR agrees that the actual CIAC may be less than the not to exceed
7 CIAC. In accordance with the provisions of Section 7 below, ENSTAR agrees to invoice the CITY
8 for its actual costs of construction on a time and materials basis. For the purposes of this contract,
9 actual cost means:

10 (1) Labor costs for work performed by ENSTAR employees plus
11 allowable administrative and construction overheads at the rates established by the State of Alaska
12 Annual Systems Audit for 2013 reimbursable construction projects.

13 (2) The actual contract cost for installation of pipe by a qualified third-
14 party contractor. ENSTAR agrees that there will be no mark-ups, overhead or profit charged on
15 third-party contracts.

16 (3) The actual contract cost of all other third-party contracts, including,
17 but not limited to, surveyors. ENSTAR agrees that there will be no mark-ups, overhead or profit
18 charged on third-party contracts.

19 (4) The actual cost of all project materials, plus a markup on material
20 handled by ENSTAR employees to compensate ENSTAR for its administrative and construction
21 overheads at the rates established by the State of Alaska Annual Systems Audit for 2013
22 reimbursable construction projects. ENSTAR agrees that inventory overheads will not apply if
23 materials are delivered directly to the construction site.

24 (d) The CITY reserves the right to examine or audit all financial records directly
25 related to this project and the invoices submitted to the CITY. This includes, but is not limited to,
26 contracts, invoices, timesheets, and other relevant documents.

27
28 2. ENSTAR shall perform, or have performed, all studies, analyses, engineering,
29 contracting, acquisition, construction, supervision, testing, acceptance and other acts necessary to
30 construct the System.

31
32 3. ENSTAR shall install the System within existing easements and right-of-ways where
33 natural gas lines may be installed or it will obtain easements as needed where existing easements
34 and right-of-ways are not adequate. ENSTAR's inability to secure the necessary easements and/or
35 right-of-ways shall be considered reasonable cause under paragraph 15 of this Agreement.

36
37 4. ENSTAR shall own the System; however, if at any time before the end of the useful
38 life of the System, ENSTAR or its successors or assigns formally abandons natural gas service to
39 any lot or tract shown on Attachment "A," excluding abandonment of service lines or related plant
40 then, ENSTAR shall, upon written demand by the CITY, convey to the CITY all of ENSTAR's
41 rights, title and interest in that part of the System abandoned, including any unrefunded construction
42 deposits.

**NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
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1 5. The CITY makes no warranties of title, quality or fitness for a particular use and
2 specifically denies any warranty or responsibility of any kind with respect to the engineering,
3 construction, location, condition or completeness of the System.
4

5 6. ENSTAR shall assume full responsibility for all aspects of the System, including but
6 not limited to the System's maintenance, upkeep and safety. ENSTAR agrees to maintain and
7 operate the System at ENSTAR's sole expense for the useful life of the System or until gas service
8 is discontinued in accordance with applicable law. Additionally, excluding incidents which arise in
9 whole or in part from the negligent acts or omissions of the CITY or its personnel that cause bodily
10 injury or death or physical damage to tangible property, ENSTAR agrees to indemnify, save, hold
11 harmless and defend the CITY for and from any and all claims, charges and suits arising in whole or
12 in part out of the engineering, construction, location, operation, use or any condition of the System,
13 or arising from ENSTAR's failure to obtain necessary permits, authorizations, or failure to comply
14 with any federal, state or local law applicable to the Agreement, or arising out of any other action or
15 failure to act by ENSTAR related to the System.
16

17 7. The CITY shall pay ENSTAR, in total, no more than the not to exceed CIAC set out
18 in paragraph 1 above. The actual CIAC may be less and will be based upon actual costs incurred as
19 described in Section 1 above. The parties have a mutual interest to ensure that the project proceeds
20 expeditiously and efficiently. Therefore, the City agrees to advance funds in three lump sum
21 installments in calendar year 2013. On or about March 25, 2013, the City will provide a lump sum
22 in the amount of \$2,000,000 to facilitate pre-construction activities including, but not limited to,
23 permitting, surveying, engineering, design and procurement. This date is subject to final approval of
24 the financing documents by a lending institution, the City Council, and the availability of the bond
25 proceeds. Notwithstanding a written authorization to proceed from the CITY, until ENSTAR has
26 received this initial advance of \$2,000,000, ENSTAR shall not be obligated to commence pre-
27 construction activities.
28

29 Provided that ENSTAR first has notified the City that ENSTAR has signed a construction contract
30 with a third-party contractor, the City will forward a second lump sum in the amount of \$3,000,000
31 no later than June 3, 2013. Notwithstanding a written authorization to proceed from the City, until
32 ENSTAR has received this second advance payment of \$3,000,000, ENSTAR shall not be obligated
33 to commence installation of natural gas distribution mains.
34

35 Finally, the City shall forward a third lump sum payment in the amount of \$2,000,000 no later than
36 August 5, 2013. If the third advance is not made by August 5, 2013, ENSTAR may cease all
37 construction activities until such payment is actually received by ENSTAR.
38

39 The foregoing advance payments will be made in 2013 for a total of \$7,000,000. If the project is
40 terminated for any reason, ENSTAR will refund any unused balance within thirty (30) days of
41 contract termination.
42

43 Beginning in 2014, after all funds advanced in 2013 are exhausted, ENSTAR shall invoice the
44 CITY each month during construction of the System for actual costs for ENSTAR labor, project

**NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
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1 materials, and contractor work incurred during the preceding month. Save and except for portions
2 of an invoice that are disputed in good faith, payments are to be made within thirty (30) days of
3 receipt by the CITY of an ENSTAR invoice until the project is deemed complete, or the CIAC
4 amount in paragraph 1 has been paid in full. Any amount outstanding after thirty (30) days will
5 accrue interest at the rate of 10.5% percent per annum. In the event that all or a portion of any
6 invoice (except for any portion of the invoice that is disputed in good faith) is not paid within forty-
7 five (45) days from receipt of billing, ENSTAR may suspend all construction activities until the past
8 due balance has been paid in full.

9
10 8. For the purposes of conforming with the section of ENSTAR's tariff governing
11 System extensions (Section 602), the HSAD will be considered a developing subdivision. The
12 CITY will be analogous to a developer for the purposes of payment and refund of the CIAC outlined
13 in paragraph 1 above.

14
15 9. The HSAD is designed and engineered to accommodate a single service line and
16 meter to each lot and tract shown in Attachment "A." In the event a tract or parcel is subdivided
17 into multiple lots, or a tract or parcel is developed in a manner requiring multiple meters or service
18 lines, ENSTAR, in its sole discretion, may require payment for a separate main extension and/or
19 reinforcement costs.

20
21 10. ENSTAR, in its sole discretion, may elect to treat property outside of the HSAD as
22 shown in Attachment "A" as property not eligible for connection to the HSAD without payment for
23 a separate main extension and/or reinforcement costs. Alternatively, ENSTAR may elect to connect
24 such property to the System installed under the terms of this Agreement. In that event, property
25 outside of the HSAD shall be treated as property that has not contributed to the cost of the System.
26 Accordingly, if the property is connected during the calendar year of construction, or within two (2)
27 full years following the year of construction, the property owner or customer will be required to pay,
28 as a main CIAC, a prorated share of the original CIAC prior to connection to the System, as outlined
29 in Section 602e(2)(a) of ENSTAR's tariff. Any deposits collected from outside the HSAD plus the
30 Free Main Allowance (FMA) attributable to the new customer will be refunded pro rata to the CITY
31 and any new customer who has paid a deposit by February 1 for the previous year's new customer
32 additions.

33
34 11. Refunds:

35 (a) The Main Extension CIAC collected from a new Participant (as described in
36 paragraph 10 above) plus the FMA attributable to the new Participant will be calculated and paid by
37 ENSTAR annually on a pro rata basis to the CITY and any new Participant having paid a Main
38 Extension CIAC. These will be paid by April 1 and be based upon the prior year's Participant
39 additions to the Main Extension.

40 (b) Refunds not involving the collection of a CIAC will be calculated for the
41 CITY and those Participants who have Main Extension Advances on the Main Extension, except for
42 Feeder Mains, prorata, equal in total to the amount of the Free Main Allowance for each new
43 consuming Customer directly served by the Main Extension (not already included in a refund made
44 under paragraph 11(a) above) until all of the CIAC portion of the Advance has been refunded or

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1 until the end of ten (10) full calendar years following the calendar year of construction, whichever
2 occurs earlier. These refunds will be calculated and paid by ENSTAR quarterly within one month
3 following the end of the calendar quarter and will be based upon the previous calendar quarter's
4 Customer additions to the Main Extension.

5 (c) After the end of ten (10) full calendar years following the calendar year of
6 construction the entire remaining amount of the CIAC shall become non-refundable and the
7 property of ENSTAR.

8 (d) ENSTAR may offset against any portion, or all, of any Main Extension
9 CIAC, or any refund of a Main Extension CIAC, for any or all outstanding monies due ENSTAR by
10 the CITY.

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

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

15 (g) The CITY may distribute the refund entitlements, credit the refund against
16 assessments due the CITY under the HSAD, make special assessment bond payments (related to
17 financing the HSAD), deposit the refund in a fund used as security for said special assessment
18 bonds, or may make such use of the refund as it determines to be appropriate.

19
20 12. The CITY shall indemnify, hold harmless, save and defend ENSTAR from any and
21 all claims, charges and suits arising out of the formation of the HSAD, the collection of the HSAD
22 assessments by the CITY and claim for a refund by a property owner if such claim arises from a
23 property within the HSAD/Special Assessment District and asserts misuse or misappropriation of
24 refunds paid to the CITY under the provisions of this Agreement.

25
26 13. Subject to the provisions of Section 7 above relating to advance payments, this
27 Agreement becomes effective on the date it is fully executed, provided ENSTAR shall not proceed
28 with the construction of the System until written authorization to proceed has been received from
29 the CITY, and provided further, if the CITY is unable to secure financing for the project at what the
30 CITY Council determines are reasonable terms and conditions, or if the CITY Council does not
31 form the HSAD, the CITY may cancel this Agreement. If an HSAD is canceled by the CITY, the
32 CITY agrees to reimburse, upon demand by ENSTAR, all expenses and costs related to construction
33 of the System, incurred after the receipt of written authorization to proceed.

34
35 14. Subject to the provisions of Section 7 above relating to advance payments, upon
36 receipt of written authorization to proceed and certification of funding availability satisfactory to
37 ENSTAR, ENSTAR shall proceed expeditiously with surveys, acquisition of permits and
38 easements, and other actions necessary to begin the project. However, should adverse weather
39 conditions render completion of the project either too costly or impractical in ENSTAR's judgment,
40 ENSTAR may delay completion of the project until the following construction season, unless prior
41 to construction start-up, the CITY cancels this Agreement pursuant to paragraph 15 below. If
42 project completion is delayed under the provisions of this paragraph, ENSTAR agrees that the not to
43 exceed CIAC remains in effect.
44

**NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
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DISTRIBUTION SPECIAL ASSESSMENT DISTRICT**

1 15. This Agreement is entered into based upon an estimate of actual construction costs.
2 If for any reasonable cause ENSTAR is unable to begin constructing the System during the 2013
3 construction season, either party may cancel this Agreement or may negotiate a new price consistent
4 with the same methodology as described in this agreement as determined for the following year. In
5 this paragraph, "reasonable cause" means a delay that is caused by a "Force Majeure Event" as
6 defined in paragraph 26 below, or any other event or condition that another provision of this
7 Agreement identifies as reasonable cause for the purpose of this paragraph.
8

9 16. ENSTAR shall be responsible for obtaining all permits, easements, authorizations,
10 labor, materials, contracts and other things and actions necessary to construct the System.
11 ENSTAR's inability to secure the necessary permits, easements, authorizations, labor, materials or
12 contracts shall be considered reasonable cause under paragraph 15 of the Agreement.
13

14 17. The CITY will be allowed to participate in ENSTAR's typical processes associated
15 with subcontracting the services to third-party contractors. Selection of any contractor, however,
16 will be the sole responsibility of ENSTAR. In the selection process, preference will be given to a
17 qualified bidder with the lowest bid. ENSTAR agrees to publish public notice in a newspaper of
18 general circulation in the Homer area when soliciting bids from third-party contractors. In no event,
19 however, shall this Section 17 be interpreted to require ENSTAR to deviate from its normal
20 procedure for accepting and awarding contracts.
21

22 18. Pursuant to Section 602f(3)(d) of ENSTAR's tariff, the CITY will annually provide
23 ENSTAR with a sworn verification that refunds to the CITY for the previous year made pursuant to
24 ENSTAR tariff Section 602e(3) have been applied on behalf of individual Participants in
25 accordance with the CITY's ordinances and resolutions that authorized the HSAD.
26

27 19. This Agreement is binding on the successors, assigns and legal representatives of the
28 parties.
29

30 20. Notice under this Agreement may be mailed or emailed to the contact person listed
31 below.
32

City of Homer

Contact Person: Walt Wrede, City Manager
491 E. Pioneer Avenue
Homer, Alaska 99603
Office Phone: (907) 235-8182 x2222
Cell Phone: (907) 391-1201
Email: wwrede@ci.homer.ak.us

ENSTAR Natural Gas Company,
a division of SEMCO Energy, Inc.
Contact Person: Vin Robinson, P.E.
P. O. Box 190288
Anchorage, Alaska 99519-0288
Office Phone: (907) 334-7712
Cell Phone: (907) 230-4464
Email: vin.robinson@enstarnaturalgas.com

33 21. This is the entire Agreement between the parties about the subject matter of this
34 transaction and all prior agreements, understandings and representations, whether oral or written,

**NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
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1 about this subject matter are merged into and superseded by this written Agreement. It may not be
2 modified except in writing signed by both parties.
3

4 22. No failure or delay by any party in exercising any right under this Agreement shall
5 operate as a waiver of that right, nor shall any partial exercise of a right preclude any further
6 exercise of that or any other right. The rights shall be cumulative and not exclude any rights or
7 remedies provided by law.
8

9 23. The parties to this Agreement make no representation (except as expressly stated
10 herein) or warranty of any kind or nature, directly or indirectly, express or implied, as to any matter
11 whatsoever, including merchantability or fitness for a particular purpose.
12

13 24. This Agreement shall be construed under the laws of Alaska. Any dispute hereunder
14 will be resolved by the Alaska Superior Court at Anchorage. However, this clause shall not be
15 interpreted to affect the primary jurisdiction of the Regulatory Commission of Alaska.
16

17 25. Neither ENSTAR nor the CITY shall be liable to the other for exemplary, punitive,
18 incidental or consequential damages (including without limitation lost profits or revenues) resulting
19 from or arising out of this Agreement, whether the claim is based in contract, tort, strict liability or
20 any other legal theory or principle.
21

22 26. No delay or failure of performance by ENSTAR or the CITY, or the agents, directors,
23 officers, employees and contractors of either, shall constitute a default hereunder or give rise to any
24 claim for damages if and to the extent that such delay or failure is caused by Force Majeure
25 affecting that party's ability to perform. "*Force Majeure Event*" means any event that directly or
26 indirectly renders a Party unable, wholly or in part, to perform or comply with any obligation,
27 covenant or condition in this Agreement if the event, or the adverse effects of the event, is outside of
28 the control of, and could not have been prevented by, the affected Party with reasonable foresight, at
29 reasonable cost, and by the exercise of reasonable diligence in good faith, and is not attributable to
30 the negligence or willful misconduct of the affected Party. Force Majeure Events include without
31 limitation the following events (to the extent they otherwise satisfy the definition):
32

33 (a) act of God, fire, lightning, landslide, earthquake, storm, hurricane, hurricane
34 warning, flood, high water, washout, explosion or well blowout;

35 (b) strike, lockout or other industrial disturbance, act of the public enemy, war,
36 military operation, blockade, insurrection, riot, epidemic, arrest or restraint by government of
37 people, terrorist act, civil disturbance or national emergency;

38 (c) the inability of the affected Party to acquire, or the delay on the part of the
39 affected Party in acquiring materials, supplies, machinery, equipment, servitudes, right-of-way
40 grants, pipeline shipping capacity, easements, permits or licenses, approvals or authorizations by
41 regulatory bodies or oil and gas lessors needed to enable the Party to perform;

42 (d) breakage of or accident to machinery, equipment, facilities, or lines of pipe,
43 and the repair, maintenance, improvement, replacement, test, or alteration to the machinery,
44 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

**NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
CONSTRUCTION AGREEMENT FOR THE CITY OF HOMER NATURAL GAS
DISTRIBUTION SPECIAL ASSESSMENT DISTRICT**

1 (e) act, order, or requisition of any governmental agency or acting governmental
2 authority, or any governmental law, proration, regulation, or priority.
3

4 This Force Majeure provision shall not apply to payment when due of money that is owed by one
5 party or to the other under the terms of this Agreement.
6

7 27. ENSTAR and the CITY are independent entities and are not the agent, partner or
8 employee of the other.
9

10 28. Nothing in this Agreement is intended to benefit any third party not a signatory
11 hereto.
12

13 29. The parties recognize that this Agreement is the product of the joint efforts of the
14 parties and agree that it shall not be construed against one party or the other as a result of the
15 preparation, submittal or other event of negotiation, drafting or execution hereof.
16

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

22 31. Each person signing this Agreement warrants that he or she has authority to sign the
23 Agreement.
24

25 32. Neither party shall assign this Agreement without the prior written consent of the
26 other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, and
27 subject to the provisions of Section 17 above, the CITY agrees that ENSTAR may assign portions of
28 the Work to qualified subcontractors without the consent of the CITY.
29

30 33. Additional Terms.

31 (a) The CITY represents and warrants that neither federal Davis Bacon wages
32 nor Alaska 'Little Davis Bacon' wages' (AS 36.05) apply to this project.

33 (b) ENSTAR will not be required to provide revegetation in areas where working
34 in previously disturbed soils.

35 (c) ENSTAR will follow all federal, state, municipal and local codes and
36 regulations in the installation and preparation of the pipeline extension.

37 (d) ENSTAR shall prepare its own SWPPP to ensure adequate coverage for
38 ENSTAR's scope of work.

39 (e) ENSTAR believes (but does not warrant) that this Agreement does not
40 require the review or approval of the Regulatory Commission of Alaska.
41
42

NATURAL GAS DISTRIBUTION SYSTEM EXTENSION CONTRIBUTION IN AID OF
CONSTRUCTION AGREEMENT FOR THE CITY OF HOMER NATURAL GAS
DISTRIBUTION SPECIAL ASSESSMENT DISTRICT

1 34. By signing, the CITY acknowledges having read and understood each and every term
2 and condition of this Agreement.

3
4 CITY OF HOMER

5
6
7
8 By: Walt White

9
10 Its: CITY MANAGER

11
12 Date: MARCH 20, 2013

13
14
15
16
17 ENSTAR NATURAL GAS COMPANY,
18 a division of SEMCO Energy, Inc.

19
20
21
22 By: M. Colleen Starnay

23
24 Its: President

25
26 Date: March 14, 2013

27
28
29
30
31
32 Fund Certification \$12,160,632
33 -Subject to Special Assessment Bonds to be issued.

34
35
36
37 Laurie Moore
38 Finance Director
39

City of Homer
 GAS - Reconciliation
 Thru 6/30/2021

Fund 175 - GAS												
Reconciliation												
Sources/Uses	Dept #		2013	2014	Subtotals	2015	2016	2017	2018	2019	2020	2021
KPB Loan Revenues	375	4524	8,809,368.00	3,550,020.00	12,359,388.00	-	-	-	-	-	-	-
Interest Income	375	4801	97.45	3,504.72		282,539.39	355,112.19	257,339.45	227,867.68	164,568.94	127,685.47	70,000.00
Assessment Revenue	375	4518	-	-		4,924,924.04	1,238,321.96	1,296,048.80	889,891.02	929,793.87	808,142.20	502,000.00
FMA Revenue	375	4902	-	-		-	-	-	-	-	-	1,971,808.00
Sub Total (375)			8,809,465.45	3,553,524.72		5,207,463.43	1,593,434.15	1,553,388.25	1,117,758.70	1,094,362.81	935,827.67	2,543,808.00
Wages	375	5100	(138,224.97)	(47,335.11)	(185,560.08)	(1,547.00)	-	-	-	-	-	-
Misc Expenses	375	5200	(26,286.55)	(3,463.57)	(29,750.12)	(14,947.36)	-	-	(1,351.86)	(1,189.11)	-	-
Professional Fees	375	5210	(5,345.96)	(1,282.05)	(6,628.01)	(8,897.00)	-	-	(1,904.68)	(99,540.92)	(2,349.68)	(25.00)
Construction/Equip	375	5261	(23,066.33)	(5,832.83)	(28,899.16)	-	-	-	-	-	-	-
Payments to Enstar	377	5261	(7,000,000.00)	(5,085,632.00)	(12,085,632.00)	-	-	-	-	-	-	-
Debt - Principal	375	5607	-	-		(4,094,163.16)	(3,686,458.92)	(502,520.00)	(516,428.08)	(536,818.79)	(559,717.09)	(2,459,945.08)
Debt - Interest	375	5608	-	(307,933.49)		(587,127.45)	(313,541.08)	(179,638.12)	(165,730.04)	(145,339.33)	(122,441.03)	(50,681.59)
Law suit	375	5624	-	-		(42,500.00)	-	-	-	-	-	-
Sub Total			(7,192,923.81)	(5,451,479.05)	(12,336,469.37)	(4,749,181.97)	(4,001,904.68)	(684,137.80)	(685,414.66)	(782,888.15)	(684,507.80)	(2,510,651.67)
Net Assets			1,616,541.64	(1,897,954.33)		458,281.46	(2,408,470.53)	869,250.45	432,344.04	311,474.66	251,319.87	33,156.33
Beginning Fund Balance			-	1,616,541.64		(281,412.69)	176,868.77	(2,233,601.76)	(1,364,351.31)	(932,007.27)	(620,532.61)	(369,212.74)
Audit adjustments to fund balance			-	-		-	(2,000.00)	-	-	-	-	-
Ending Fund Balance			1,616,541.64	(281,412.69)		176,868.77	(2,233,601.76)	(1,364,351.31)	(932,007.27)	(620,532.61)	(369,212.74)	(336,056.41)