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**CITY OF HOMER  
HOMER, ALASKA**

City Manager

**ORDINANCE 15-17(S)**

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING ORDINANCE 13-03(S)(2) TO PERMIT THE CITY TO PREPAY PRINCIPAL OF THE NATURAL GAS DISTRIBUTION SPECIAL ASSESSMENT BOND AUTHORIZED BY ORDINANCE 13-02(S)(2), AND AUTHORIZING AN AMENDMENT TO THE LOAN AGREEMENT BETWEEN THE CITY AND THE KENAI PENINSULA BOROUGH REGARDING THE BOND.

WHEREAS, By Ordinance 13-03(S)(2), adopted February 25, 2013, the City authorized the issuance of a Natural Gas Distribution Special Assessment Bond ("Bond") in the principal amount of not to exceed \$12,700,000, and the execution and delivery of a Loan Agreement between the City and the Kenai Peninsula Borough regarding the Bond; and

WHEREAS, By Resolution 15-017, adopted March 23, 2015 the City confirmed the assessment roll for the Homer Natural Gas Distribution Special Assessment District ("District"); and

WHEREAS, On April 3, 2015, the Superior Court in *Castner v. City of Homer, et al.*, Case No. 3HO-13-00038CI, ruled that the City's method of assessing condominium units in the District was unlawful, and the Alaska Supreme Court recently denied a Petition for Review of this ruling; and

WHEREAS, The Council may consider whether to (i) waive the assessment of certain properties in the District that cannot be served by the natural gas distribution system, and (ii) recognize subdivisions reducing the number of contiguous lots under common ownership by assessing only the reduced number of lots; and

WHEREAS, The City and the Kenai Peninsula Borough have agreed that the City should prepay the principal of the Bond in an amount equal to any reduction in the amount of assessments in the District that results from (i) any requirement that the City reassess condominium units in the District, or (ii) any decision by the Council to waive the assessment of properties in the District that cannot be served by the natural gas distribution system or to assess only a reduced number of contiguous lots in common ownership resulting from resubdivision.

43 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

44  
45 Section 1. Section 14 of Ordinance 13-03(S)(2) is amended to read as follows (added  
46 language is underlined):

47  
48 Section 14 – Reserve Fund.

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

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

57 (2) All monies received from ENSTAR as refunds of main  
58 extension advances or free main allowance arising out of new  
59 customers connecting to the Improvement, which shall be held in a  
60 separate subaccount in the Reserve Fund; and

61 (3) Any Sinking Fund and Guaranty Fund balances remaining  
62 after the discharge of the Bond.

63 (b) Until the Bond has been discharged, the funds in the Reserve  
64 Fund may be used only to pay the difference between the amount of principal  
65 and interest due on the Bond and the amount in the Sinking Fund that is  
66 available to pay that principal and interest; provided, (i) monies in the Reserve  
67 fund that were received from ENSTAR as refunds of main extension advances  
68 or free main allowance arising out of new customers connecting to the  
69 Improvement may be used as provided in subsection (d) of this section, and (ii)  
70 if the Finance Director determines that the amount of funds available in the  
71 Reserve Fund exceeds the amount of the next annual installment of principal  
72 and interest due on the Bond, the Finance Director may apply such excess to a  
73 prepayment of the Bond.

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

80 (d) Monies in the Reserve fund that were received from ENSTAR as  
81 refunds of main extension advances or free main allowance arising out of new  
82 customers connecting to the Improvement may be used as follows:

83 (1) The City may prepay principal of the Bond in an amount  
84 equal to the reduction in the total amount of assessments against

condominium units in the District pursuant to the decision of the Superior Court in *Castner v. City of Homer, et al.*, Case No. 3HO-13-00038CI, provided that immediately following such a prepayment the amount in the Reserve Fund shall not be less than the Reserve Requirement.

(2) The City may prepay principal of the Bond in an amount equal to the reduction in the total amount of assessments in the District due to action of the City either (i) waiving the assessment of certain properties in the District that cannot be served by the natural gas distribution system, or (ii) recognizing subdivisions reducing the number of contiguous lots under common ownership by assessing only the reduced number of lots, provided that immediately following such a prepayment the amount in the Reserve Fund shall not be less than the Reserve Requirement.

Section 2. The City Manager is hereby authorized to execute the First Amendment to Loan Agreement, in substantially the form presented at this meeting, but with such changes, modifications, additions and deletions therein as she shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said document now before this meeting.

Section 3. This Ordinance is not permanent in nature, and shall not be codified.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 15<sup>th</sup> day of June, 2015.

CITY OF HOMER

Francie Roberts  
FRANCIE ROBERTS, MAYOR PRO TEMPORE

ATTEST:

Jo Johnson  
JO JOHNSON, MMC, CITY CLERK

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YES: 4  
NO: ~~0~~  
ABSTAIN: ~~0~~  
ABSENT: 2  
  
First Reading: 05.26.15  
Public Hearing: 06.15.15  
Second Reading: 06.15.15  
Effective Date: 06.16.15  
  
Reviewed and approved as to form.  
Mary K. Koester  
Mary K. Koester, City Manager  
  
Date: 6.19.15  
  
Fiscal Note: NA

Thomas F. Klinkner  
Thomas Klinkner, City Attorney  
  
Date: 6-25-15