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RESOLUTION 24-062

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska authorizes the City Manager to execute and deliver the Loan Agreement in the form now presented at this meeting, but with such changes, modifications, additions and deletions therein as shall to him

be necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of the City's approval of the terms and conditions therein stated.

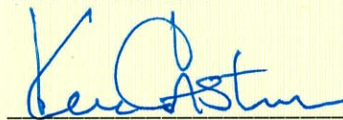
BE IT FURTHER RESOLVED by the City Council of Homer, Alaska that the City Manager, or any other person designated by the City Manager, is hereby authorized to execute and deliver for an on behalf of the City any and all additional documents or other papers and perform all such acts as he may deem necessary or appropriate in order to implement and carry out the intent and purpose of this Resolution.

BE IT FURTHER RESOLVED this Resolution does hereby incorporate by reference as though fully set out herein the Loan Agreement herein above referenced as presented to this meeting. Further, the recitals to this Resolution are hereby made a part of this Resolution, including all defined terms not herein defined.

BE IT FURTHER RESOLVED this Resolution shall become effective immediately upon its passage and approval.

PASSED AND ADOPTED by the Homer City Council on this 28th day of May, 2024.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



RENEE KRAUSE, MMC, ACTING CITY CLERK

Fiscal Note:



MEMORANDUM

Resolution 24-062, A Resolution of the City Council of Homer, Alaska, Authorizing the City Manager to Execute a Loan Agreement with the State of Alaska Department of Environmental Conservation for an Alaska Drinking Water Fund Loan in the Not to Exceed Principal Amount of \$415,670 for the Bunnell Avenue/Charles Way Water Improvement Project. City Manager/Public Works Director.

Item Type: Backup Memorandum
Prepared For: Mayor Castner and City Council
Date: May 20, 2024
From: Daniel Kort, Public Works Director
Through: Melissa Jacobsen, Interim City Manager

ISSUE:

The City of Homer's loan amount is lower than the City of Homer's loan application with the Alaska Department of Environmental Conservation (ADEC).

EXPLANATION:

The boundaries of the assessment district were reduced after the loan application was submitted to the ADEC due to reduced owner participation, thereby slightly reducing the overall cost of the project. Further, a very competitive bidding environment lead to additional savings to the project. The combination of these two influences resulted in a lower loan amount than anticipated.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

DIVISION OF WATER
PO Box 111800
Juneau, Alaska 99811-1800
Main: 907.465.6594
Fax: 907.465.5177

May 3, 2024

Ms. Melissa Jacobsen
Interim City Manager
City of Homer
491 E. Pioneer Avenue
Homer, Alaska 99603-7624

RE: Loan Agreement No. 409351-S for Bunnell-Charles Way Water Main Extension

Dear Ms. Jacobsen:

Enclosed for signature is the loan agreement in the amount of \$415,670 for the Bunnell-Charles Way Water Main Extension. This loan is provided with \$225,690 in loan forgiveness. The annual finance rate for this loan is 1.7938 percent.

Please return a copy of the fully signed loan agreement to dec.facilities.grants.loans@alaska.gov or mail a hard copy to the address identified below. The signed original agreement should be retained for your records.

Alaska Department of Environmental Conservation
Division of Water
Attn: State Revolving Loan Program
555 Cordova Street
Anchorage, Alaska 99501

This loan is not effective, and no disbursements will be made until the Department has received a copy of the fully signed agreement. If you have any questions regarding the loan agreement you may contact Young Ha, Program Manager, at 907-269-7544 or Josh Alvey, Project Engineer, at 907-269-1065.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carrie Bohan".

Carrie Bohan
Facilities Programs Manager

Enclosure: ADWF No. 409351-S Bunnell-Charles Way Water Main Extension Loan Agreement

**Drinking Water State Revolving Fund
Loan Agreement
No. 409351-S**

Between

**State of Alaska
Department of Environmental Conservation
Division of Water
State Revolving Fund Program**

And

City of Homer

Bunnell-Charles Way Water Main Extension	
Loan Amount	\$415,670
Subsidy Amount	\$225,690
Repayment Amount	\$189,980
Finance Charge	1.7938%
Term	20 years

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Article 1. Loan Terms

This loan agreement (“Agreement”) is made and entered into as of the date of final signature by the Alaska Department of Environmental Conservation (“Department”) and the City of Homer (“Borrower”) as identified in Article 4, and continues in full force and effect until the final day of the Agreement Period. This Agreement is made subject to, and conditional upon, the availability of funds.

1.01 Borrower Information

Borrower Name:	City of Homer
Borrower Mailing Address:	491 E. Pioneer Avenue, Homer, AK 99603-7624
Name of Authorized Signatory:	Melissa Jacobsen
Resolution Authorizing Application:	22-018

1.02 Project Description

The Borrower shall use this loan to extend the water distribution system to provide piped public water to 27 central business district zoned properties, all of which currently are served by hauled water from City watering points.

1.03 Loan Amount

\$415,670

1.04 Loan Term

20 years

1.05 Principal Forgiveness

\$225,690

1.06 Finance Charge

Interest Rate: 1.2938%
Fee: 0.5%
Total Finance Charge: 1.7938%

1.07 Special Conditions

The Borrower shall comply with the special conditions outlined below:

Submit a resolution of the city council that authorizes a designated representative of the local government to execute this loan agreement.

Article 2. General Terms and Conditions

The Borrower shall comply with all applicable federal, state and local laws, requirements, and ordinances for the planning, design, construction, implementation, and administration of the Project and this Agreement, including but not limited to those identified in the General Terms and Conditions and Attachments.

2.01 Accounting Practices

The Borrower shall separately account for all monies received from the Alaska Drinking Water Fund and shall maintain project accounts in accordance with generally accepted governmental accounting principles. The Department shall have the right to audit Borrower's records related to the Project.

2.02 Timely Use of Funds

- a. Concurrent with the execution and delivery of this Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to complete the Project in a timely manner in accordance with all applicable loan conditions.
- b. The Department will, in its discretion, revoke this Agreement if the Borrower has not initiated the Project within one year after signing the Agreement.
- c. If no disbursement request is made within the two year period, the Department may take action to recall the loan.

2.03 Disbursement of Funds

Subject to the terms and conditions of this Agreement, the eligible project costs less other funding sources will be disbursed by the Department upon receipt and approval of Disbursement Requests and Progress Status Updates.

The Borrower shall submit Disbursement Requests and Progress Status Updates to the Department via the Division of Water's Online Application System (OASys). OASys may be accessed at the following link: <https://dec.alaska.gov/water/oasys>.

- a. Disbursement Requests including Progress Status Updates must be submitted to the Department on a quarterly basis, within 30 days following the end of each quarter.
- b. Should the Borrower fail to submit the quarterly Disbursement Requests and Progress Status Updates as required, the Department will not process subsequent Disbursement Requests until all outstanding quarterly report(s) are received.
- c. Departmental approvals required by this Agreement will not be unreasonably withheld.

- d. The Department will disburse funds only as necessary to complete the Project. Any funds remaining after completion of the Project will remain in the Alaska Drinking Water Fund.
- e. Borrower shall provide the Department with written evidence of materials and labor furnished to and performed upon the Project and such receipts of the payment of the same, releases, satisfactions and other signed statements and forms as the Department may reasonably require.
- f. The Department may at any time review and audit requests for disbursement and make adjustments for, among other things, ineligible expenditures, mathematical errors, items not built or bought, unacceptable work and other discrepancies.

2.04 Principal Forgiveness

As part of this Agreement, the Department has offered the Borrower \$225,690 of subsidy, in the form of principal forgiveness.

- a. Subsidy will be applied to each disbursement at 54% until all available subsidy has been applied.
- b. All subsidy shall be spent within one year of the date of this Agreement. Any subsidy funds not used within one year of the date of this Agreement may be withdrawn by the Department.

2.05 Loan Repayment

- a. The Borrower shall repay the principal amount and the finance charges on all cash disbursements made to the Borrower according to the repayment schedule. The repayment schedule will be prepared by the Department and confirmed by the Borrower, and will provide that:
 - i. The Borrower shall pay a finance charge of 1.7938% on each disbursement. The finance charge is comprised of a fee of 0.5% on the total loan disbursed, plus the interest rate of 1.2938%. Accrual of the finance charge will begin one year after the date of the first disbursement to the Borrower.
 - ii. The Borrower shall pay back the loan amount within 20 years from initiation of repayment. Repayment of the loan will be made with either equal annual principal payments plus the finance charge or equal annual total payments including the finance charge. Other repayment methods may be negotiated with the Department. Payments shall be applied first to any costs or charges incurred by the Department, outstanding interest, and, finally, to principal.
 - iii. The first installment payment will be due one year following substantial completion and initiation of operation of the Project.

- b. The Borrower hereby grants to the Department a security interest in and irrevocably pledges its Net Operating Revenues of the Borrower's water system to secure payment of and to pay the amounts due under this Loan Agreement. The Net Operating Revenues so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by law. The Borrower represents and warrants that the pledge of its Net Operating Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement. The Borrower covenants with the Department and any assignee of this Agreement that, except as otherwise expressly provided herein, the Borrower shall not issue any other obligations which have a pledge or lien on its Net Operating Revenues superior to or on a parity with the pledge herein granted without the written permission of the Department. This Loan is a parity obligation with all other State Revolving Fund (SRF) loans between the Department and the Borrower.
- c. The Borrower represents and warrants to the Department that the Borrower has not pledged revenues for the repayment of this Loan that have been previously pledged or encumbered, unless specifically set forth in the Borrower's Approved Application. The Net Operating Revenues pledged in this Loan Agreement for repayment of this Loan and each separate source of revenue are specifically identified and described in the Borrower's Approved Application.
- d. If the Borrower's Net Operating Revenues are insufficient to meet any loan payment to the Department when due, the Borrower shall pay the deficiency in its loan payment from any legally available funds of the Borrower. Repayment of the loan shall not be a direct and general obligation of the Borrower.
- e. If the Project Facility is damaged or destroyed prior to completion of the Agreement Period, the Borrower is liable to the Department for all amounts due under this Agreement.

2.06 Late Payment Fee

The Borrower shall be subject to a late charge for any repayment that is delinquent by more than 30 days, in accordance with the following conditions.

- a. If the Borrower is in good standing with the Department and has no late payments on any loans within the last five years:
 - i. And a payment is more than two months late a 1% charge will be applied against the outstanding amount due;
 - ii. And a payment is more than three months late a 3% charge will be applied against the outstanding amount due;
 - iii. And a payment is more than four months late a 5% charge will be applied against the outstanding amount due.

- b. If the Borrower has had late loan payments in the last five years.
 - i. And a payment is more than one month late a 1% charge will be applied against the outstanding amount due;
 - ii. And a payment is more than two months late a 3% charge will be applied against the outstanding amount due;
 - iii. And a payment is more than three months late a 5% charge will be applied against the outstanding amount due.
- c. Additionally, interest on the unpaid balance will continue to accrue at the rate established in Section 1.06 and must be paid in addition to the late charge. Payments in arrears when the 5% late charge is assessed will be referred to the Alaska Department of Law for collection.

2.07 Loan Default

The Borrower shall be in default, if a loan repayment has not been made within 90 days of the due date, as determined by the repayment schedule prepared by the Department and provided to the Borrower.

The provisions of AS 37.15.575 relating to state aid interception apply to the loan made under this Agreement.

2.08 Notification

Any disbursement or repayment made by the Department or Borrower under this Agreement shall be delivered by electronic transfer or by registered or certified mail.

- b. In order to submit repayments electronically, the Borrower must submit a request to the following email: dec.adcc.userfees@alaska.gov to initiate the process and complete required forms.

- c. Any repayment addressed to the Department shall be sent to:

Alaska Department of Environmental Conservation
Division of Administrative Services
Financial Services
PO Box 11800
Juneau, AK 99811-1800

- d. Any disbursement addressed to the Borrower shall be sent to:

Melissa Jacobsen, Interim City Manager
City of Homer
491 E. Pioneer Avenue
Homer, AK 99603-7624

2.09 Insurance

- a. If applicable, until the Project is completed by the Borrower, the Borrower (or at the option of the Borrower, the contractor) shall maintain insurance for the loss of the Project Facility for the benefit of the Department, the Borrower and the prime contractor, and all subcontractors, as their interests in the Project may appear. The Borrower shall insure the Facility against loss or damage in an amount at least equal to the Eligible Project Costs.
- b. If applicable, an insurance policy issued pursuant to Section 2.15 must be written or endorsed to make losses payable to the Department and the Borrower as their interests may appear. The interests of the Department are limited to the unpaid principal balance of the loan and any finance charge and penalties accrued as of the date such loan may be paid in full as a result of any insurance payoff, following destruction or damage to the Project Facility.
- c. In the event the Borrower fails to maintain the full insurance coverage required by this Agreement, the Department may take out the required policies of insurance and pay the premiums. All amounts so advanced by the Department shall become an additional obligation of the Borrower to the Department.
- d. The Borrower shall require its contractors and subcontractors to maintain workers compensation, commercial general liability, property damage, and vehicle liability insurance. Until the Project is complete, the Borrower (or at the option of the Borrower, the contractor) shall maintain insurance for the loss of the facility for the benefit of the Department, the Borrower, the prime contractor, and all subcontractors, as their interests in the Project may appear.

2.10 Environmental Review

Prior to initiating the Project, the Borrower shall consult with the Department to determine the required level of environmental review. The Department will notify the Borrower of the type of environmental documentation that will be required, if any.

The Borrower shall complete an environmental review in accordance with the State Environmental Review Process (SERP), and in compliance with state and federal environmental laws prior to any ground disturbing or construction activities conducted as part of this Project. Disbursement Requests for costs related to construction activities shall not be accepted until the SERP review has been completed. Any ground disturbing or construction activities that occur prior to the notification to the Borrower, by the Department, that Department's decision has been finalized are ineligible for reimbursement.

Any mitigation measures identified through the environmental review shall be fully implemented by the Borrower.

An environmental determination is valid for five years. Any activities occurring more than five years following the original environmental determination must undergo an additional review.

2.11 Archeological and Historical Preservation

If historical or cultural artifacts are discovered during the Project, the Borrower shall immediately stop construction and implement reasonable measures to protect the discovery site from further disturbance; take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site; and notify the concerned tribe's cultural staff or committee, the Department, and the State of Alaska's Historical Preservation Officer. If human remains are uncovered, the Borrower shall immediately report the presence and location of the remains to law enforcement, the concerned tribe's cultural staff or committee, and the Department.

2.12 Site Access

The Department has the right, at all reasonable times, to enter the Project Site, for the purpose of inspecting the Project and Project Facility.

2.13 Construction

- a. With the exception of land easements, all real estate and personal property constituting the Project Site and the Project must belong to the Borrower.
- b. The Borrower shall not begin construction until the Project has received an Approval to Construct (ATC), if one is required. If an ATC is not required by the Department's Drinking Water Program (DWP), the Borrower shall provide a statement from DWP to that effect.
 - i. In its approvals, the Department may specify changes or conditions to the plans and specifications.
 - ii. The Department must approve any subsequent changes to, or deviations from, approved plans.
- c. If an ATC as described in (b) above is not required, the Borrower shall not begin construction until the plans and specifications have been reviewed and approved by the assigned State Revolving Fund Program Engineer.
- d. Any construction contract estimated to equal or exceed \$100,000 shall be awarded through a competitive bidding process and any construction contract estimated to be less than \$100,000 may be negotiated if the Department approves the solicitation and negotiation procedures.
- e. All construction contracts and contractors' estimate forms shall be prepared so that materials and equipment may be readily itemized as to allowable project costs and non-eligible costs.

- f. Any change in a construction contract that will alter the contract specifications, time, or price, or will substantially modify the proposed treatment process, shall be submitted to the Department for approval if the Borrower wishes to have the modifications considered loan eligible.
- g. When applicable, the Borrower shall require each construction contractor to furnish a performance and payment bond in an amount at least equal to 100 percent of the contract price.
- h. Construction of the Project shall conform to applicable federal, state, and local laws, ordinances, and regulations.
- i. The Borrower shall proceed expeditiously and complete the Project in accordance with the Approved Application, project schedule, surveys, plans, profiles, cross-sections, specifications, and amendments.

2.14 Compliance with Laws, Regulations, Etc.

The Borrower shall comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules, guidelines, regulations, and requirements to include, but not limited to, the following:

- a. The “List of Federal Laws and Authorities (Federal ‘Cross-Cutting’ Authorities)” as identified in Exhibit “A” and made a part hereof.
- b. Lobbying

No portion of the loan amount may be used for lobbying or propaganda purposes as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

- c. Davis-Bacon Act

For construction, alteration, and repair of treatment works, the Borrower shall ensure that contract wages paid are the higher of the State or Federal wage rate on a classification by classification basis for the construction of the Project. Both prevailing wage rates established for the locality by the Alaska Department of Labor under AS 36.05.010, and Federal standards in accordance with 40 U.S.C. Subtitle II Part A Subchapter IV (commonly referred to as the “Davis Bacon Act”) apply. Labors and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

- i. The Borrower shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) less than 10 days before posting. Wages are locked-in at bid opening if awarded within 90 days. Wages must be updated if contract award is more than 90 days after bid opening. Once a Davis-Bacon wage rate has been locked, it stays in effect for the duration of the project. These wage

determinations shall be incorporated into solicitations and any subsequent contracts. In addition, the wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor or subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- ii. The Borrower shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub-contracts in excess of \$2,000. Borrower shall ensure no contracts are awarded to contractors excluded from federal contracts.
 - iii. The Borrower shall periodically interview a representative portion of the work force entitled to Davis-Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates. Borrowers shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. As provided in 29 CFR 5.6(a)(5), all interviews must be conducted in confidence. The Borrower must use Standard Form 1445 or equivalent documentation to memorialize the interviews.
 - iv. The Borrower shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. In addition, during the examinations, the Borrower shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions. The Borrower shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.
 - v. In addition, the Borrower shall consult with the Department on any required contract or bid document language to ensure that appropriate federal "Davis Bacon Act" material is included in the documentation.
- d. Title I – Employment of the American with Disabilities Act of 1990

When applicable, the Borrower shall comply with Title I-Employment of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title I of that Act, shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

- e. Title II-Public Services of the Americans with Disabilities Act of 1990

When applicable, the Borrower shall comply with Title II-Public Services of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title II of the Act, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

f. Title II, Part 35, Section 35.151 of the Americans with Disabilities Act “New Construction and Alterations”

When applicable, the Borrower shall comply with Title II, Part 35, Section 35.151 of the Americans with Disabilities Act “New Construction and Alterations.”

- i. Design and construction: Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.
- ii. Alteration: Each facility or part of a facility altered by, on behalf, of or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.
- iii. Accessibility standards: Design, construction or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.5(1)(j) of ADAAG shall not apply.

g. Title III, Part 36, Section 36.401 of the American with Disabilities Act “New Construction”

When applicable, the Borrower shall comply with Title III, Part 36, Section 36.401 of the Americans with Disabilities Act “New Construction.” Except as provided in paragraph (b) and (c) of the Act, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.

h. Title III, Part 36, Section 36.402 of the Americans with Disabilities Act “Alterations”

When applicable, the Borrower shall comply with Title III, Part 36, Section 36.402 of the Americans with Disabilities Act “Alterations.”

- i. General: Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

- ii. Alteration: An alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.
- i. 2 CFR Part 180, Responsibilities of Participants Regarding Transactions

The Borrower shall fully comply with Subpart C of 2 CFR Part 180, entitled “Responsibilities of Participants Regarding Transactions.” The Borrower is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. The Borrower is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The Borrower acknowledges that failing to disclose the information required under 2 CFR Part 180 may result in the delay or negation of this assistance Agreement, or pursuance of legal remedies, including suspension and debarment.

- j. American Iron and Steel

Per the “America’s Water Infrastructure Act of 2018,” none of the funds made available to the Borrower through this Agreement shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States, unless the Department approved engineering plans and specifications prior to December 16, 2014.

The Borrower may request a waiver to this requirement if:

- i. It is inconsistent with the public interest;
- ii. Iron and steel products that are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- iii. Inclusion of iron and steel products produced in the United States that will increase the cost of the overall Project by more than 25 percent.

Waiver requests shall be submitted to the Department by the Borrower; the Department will then forward the request to the Environmental Protection Agency (EPA) for consideration. EPA will make a copy of the request, and information available to the Administrator concerning the request, available to the public on an EPA website for at least fifteen days for informal public input prior to making a finding.

2.15 Project Completion

- a. Upon completion of the Project, the Borrower shall provide a statement to the Department of the project final costs by category of expenditure, including but not

limited to costs for administration, design, construction engineering, construction and equipment.

- b. Prior to initiation of operations, the Borrower shall submit to the Department the following:
 - i. Criteria for project performance.
 - ii. An adopted water use ordinance and a user charge.
- c. Upon substantial completion of the Project, the Borrower shall initiate operation of the Project Facility and immediately notify the Department in writing of initiation of operation. If construction is complete except for minor items, and the facility is operating, but the Borrower has not sent a notice of initiation of operation, the Department will, in its discretion, assign an initiation of operations date.
- d. For any Project that requires an Approval to Construct from the Department, the Borrower must obtain a Final Approval to Operate.
- e. Upon initiation of operation, the Borrower shall certify that the Project Facility is and will be operated by sufficient qualified operating personnel certified by the State of Alaska.
- f. Within one year of the initiation of operation, the Borrower shall
 - i. Be subject to a final inspection by the Department;
 - ii. Submit to the Department a manual for operations and maintenance of the Project Facility for Department approval;
 - iii. Submit to the Department a certification that the facility is performing up to design standards.
- g. Nothing contained in this Agreement shall be construed as an obligation or pledge of the Borrower to appropriate or expend general funds and general revenues of the Borrower to operate or maintain the Project Facility.

2.16 Amendments and Modifications

This Agreement may only be modified or amended in writing and executed by the authorized representatives of all parties to this Agreement.

2.17 Disputes

The Borrower shall raise any concerns or issues it may have regarding the Project with the Department promptly and prior to project completion. If those concerns or issues are not satisfactorily resolved, the Borrower shall promptly give written notice to the Department with a detailed description of the continuing concerns or issues. Jurisdiction and venue for

any legal dispute shall be in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, and in no other court or location. In the event of a legal dispute, both parties knowingly and voluntarily waive their right to trial by jury (including any advisory jury) and elect to have the dispute tried only to a judge. In the event of litigation, the prevailing party shall be entitled to an award of its reasonable, actual attorney's fees and costs of litigation. Each party has had an opportunity to review this Agreement with legal counsel of its choosing (or waived such opportunity), therefore this Agreement shall not be interpreted in favor of either party. This Agreement shall be governed by the laws of the State of Alaska.

2.18 Termination

The Department may cancel all or any part of this Agreement if:

- a. Any representation or other statement made by the Borrower to the Department in connection with its application for a loan from the Alaska Drinking Water Fund is incorrect or incomplete in any material respect;
- b. The Borrower has violated commitments made in the Approved Application and supporting documents, has not adhered to the regulations of the Alaska Drinking Water Fund (18 AAC 76), has violated any of the terms of this Agreement; or
- c. The financial position of the Borrower has, in the opinion of the Department, suffered a materially adverse change.

2.19 Indemnification

The Borrower shall defend with counsel of the Department's choosing, indemnify, and hold harmless the Department and the State of Alaska, and their agents, servants, contractors, and employees, from and against any and all claims, demands, causes of action, actions, and liabilities arising out of, or in any way connected with this funding or the Project for which the funding is made, howsoever caused, except to the extent that such claims, demands, causes of action, actions or liabilities are the proximate result of the sole negligence or willful misconduct of employees or agents of the Department or the State of Alaska.

Article 3. Definitions

Except where the context clearly indicates otherwise, terms used in this Agreement will have the meaning ascribed to them in this section.

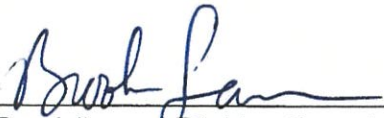
- a. "Approved Application" means the application submitted to the Department on October 6, 2023, together with all attachments and supporting documentation, as approved by the Department.
- b. "Finance Charge" means 1.7938 percent per annum.
- c. "Agreement Period" means the time period commencing on the date this Agreement is signed by the Department's Finance Officer and terminating on the date the Borrower repays the loan in full.
- d. "Subsidy" means principal forgiveness awarded under this Agreement.
- e. "Eligible Project Costs" include the following costs disbursed from the Alaska Drinking Water Fund, estimated to not exceed \$415,670 for demolition, construction, engineering, machinery, furnishings, equipment, surveys, plans, estimates, specifications, necessary insurance, financial and environmental investigations, laboratory testing, resident engineering and inspection fees, force account, legal expenses, and any other necessary miscellaneous expenditures, minus the amount of any grant applicable foregoing costs.
- f. "Initiation of Operation" means the date of which the Project or Project Facility begins operating for the purposes for which it was planned, designed, or built.
- g. "Iron and Steel Products" means the following products are primarily of iron and steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps, and restraints, vales, structural steel, reinforced precast concrete, construction materials.
- h. "Net Operating Revenues" means revenues of Borrower's system after payment of operation and maintenance costs of the system.
- i. "Project" means the activities or documents described in Article 1.02.
- j. "Project Facility" means the water treatment plant, distribution system, or related facilities in which Project activities are occurring.
- k. "Project Site" means the location at which the Project activities are occurring.

Article 4. Signatures

This Agreement is binding upon the parties specified below, and to any person, office, or board succeeding either of the parties. This Agreement may not be assigned by the Borrower without written consent of the Department.

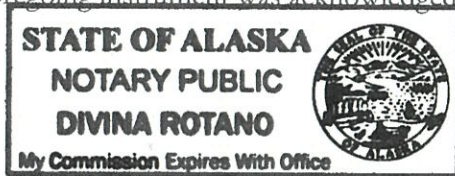
Nothing in this Agreement, whether or not accepted, may be deemed to constitute a contractual obligation on the part of the Department until the Agreement is signed by all parties.

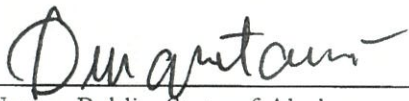
Alaska Department of Environmental Conservation

By: 
Brook Larson, Division Operations Manager
Division of Administrative Services

ACKNOWLEDGEMENT STATE OF ALASKA First Judicial District

The foregoing instrument was acknowledged before me this 3rd day of May, 2024



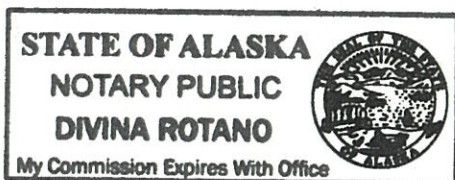

Notary Public, State of Alaska
My commission expires: with office

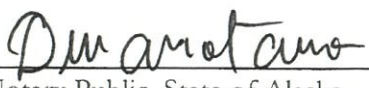
Alaska Department of Environmental Conservation

By: 
Carrie Bohan, Facilities Programs Manager
Division of Water

ACKNOWLEDGEMENT STATE OF ALASKA First Judicial District

The foregoing instrument was acknowledged before me this 3rd day of May, 2024




Notary Public, State of Alaska
My commission expires: With office

City of Homer

By: _____
Melissa Jacobsen
Interim City Manager

**ACKNOWLEDGEMENT
STATE OF ALASKA
Third Judicial District**

The foregoing instrument was acknowledged before me this _____ day of _____, 2024

Notary Public, State of Alaska
My commission expires: _____

Exhibit “A” – List of Federal Laws and Authorities
(FEDERAL CROSS-CUTTING AUTHORITIES)

Environmental and Cultural Authorities:

- Archeological and Historic Preservation Act of 1974, Public Law 93-291
- Archeological Resources Protection Act, Public Law 96-95 as amended
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668c
- Clean Air Act, Public Law 95-95, as amended
- Clean Water Act, Public Law 92-50, as amended
- Coastal Barriers Resources Act, Public Law 97-348
- Coastal Zone Management Act of 1972, Public Law 92-583, as amended
- Consultation and Coordination with Indian Tribal Governments, Executive Order 13175
- Endangered Species Act, Public Law 93-2015 as amended
- Environmental Justice, Executive Order 12898
- Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act, Public Law 94-265, as amended
- Farmland Protection Policy Act, Public Law 97-98
- Fish and Wildlife Coordination Act, Public Law 85-624, as amended
- Floodplain Management, Executive Order 11988, as amended by Executive Order 13690
- Marine Mammal Protection Act, 16 U.S.C. 1361
- Migratory Bird Treaty Act, 16 U.S.C. 703
- National Historic Preservation Act of 1966, Public Law 89-665
- Native American Graves Protection and Repatriation Act, Public Law 101-601
- Protection and Enhancement of the Cultural Environment, Executive Order 11593
- Protection of Wetlands, Executive Order 11990, as amended by Executive Order 12608
- Rivers and Harbors Act, 33 U.S.C. 403
- Safe Drinking Water Act, Public Law 93-523, as amended
- Wild and Scenic Rivers Act, Public Law 90-542

Social Policy Authorities:

- Age Discrimination Act of 1975, Public Law 94-135
- Title VI of the Civil Rights Act of 1964, Public Law 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Public Law 93-112
- Equal Employment Opportunity, Executive Order 11246
- Disadvantage Business Enterprise Provisions
 - Promoting the Use of Small, Minority, and Women-owned Businesses, Executive Orders 11625, 12138, and 12432
 - Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590
 - Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies appropriations Act of 1993, Public Law 102-389

Economic Authorities:

- Procurement Prohibitions Under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, included Executive Order 11738, Administration of the Clean Water Act with Respect to Federal Contracts, Grants, or Loans
- Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended

Miscellaneous Authority:

- Debarment and Suspension, Executive Order 12549
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646 as amended
- Preservation of Open Competition and Government Neutrality Towards Government contractors' Labor Relations on Federally Funded Constructed Projects, Executive Order 13202, as amended by Executive Order 13208
- Prohibition Against Sex Discrimination Under the Federal Water Pollution Control Act, Section 13 of Public Law 92-500
- 40 CFR Part 34, New Restrictions on Lobbying