

## MAIN EXTENSION CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT

THIS MAIN EXTENSION CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT is made this 25 day of July 2012 between ENSTAR Natural Gas Company, a division of SEMCO Energy, Inc. (ENSTAR), whose address is 3000 Spenard Road, Anchorage, Alaska 99503, and the City of Homer (Homer), whose address is 491 E. Pioneer Avenue, Homer, Alaska 99603.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Office Phone: (907) 714-7514  
Cell Phone: (907) 830-9065  
Email: chet.frost@enstarnaturalgas.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The City of Homer

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

By: Walt Shedd By: M. Colleen Starling

Its: CITY MANAGER Its: President

Date: JULY 26, 2012

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