

**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 ____ 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

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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.

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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

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materials, and contractor work incurred during the preceding month. Save and except for portions of an invoice that are disputed in good faith, payments are to be made within thirty (30) days of receipt by the CITY of an ENSTAR invoice until the project is deemed complete, or the CIAC amount in paragraph 1 has been paid in full. Any amount outstanding after thirty (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 (except for any portion of the invoice that is disputed in good faith) is not paid within forty-five (45) days from receipt of billing, ENSTAR may suspend all construction activities until the past due balance has been paid in full.

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

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

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

11. Refunds:

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

(b) Refunds not involving the collection of a CIAC will be calculated for the CITY and 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 (not already included in a refund made 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

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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,

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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
warning, flood, high water, washout, explosion or well blowout;

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

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

41 (d) breakage of or accident to machinery, equipment, facilities, or lines of pipe,
42 and the repair, maintenance, improvement, replacement, test, or alteration to the machinery,
43 equipment, facilities, or lines of pipe, and the freezing of a well or line of pipe, well blowout, or the
44 partial or entire failure of a Gas well; or

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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

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

CITY OF HOMER

By: _____

Its: _____

Date: _____

ENSTAR NATURAL GAS COMPANY,
a division of SEMCO Energy, Inc.

By: _____

Its: _____

Date: _____

Fund Certification \$12,160,632
-Subject to Special Assessment Bonds to be issued.

Finance Director