

Introduced by: Mayor  
Date: 06/16/15  
Action: Adopted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2015-033**

**A RESOLUTION APPROVING THE FIRST AMENDMENT TO LOAN AGREEMENT  
BETWEEN THE KENAI PENINSULA BOROUGH AND THE CITY OF HOMER  
REGARDING FINANCING A UTILITY SPECIAL ASSESSMENT DISTRICT**

**WHEREAS**, in Resolution 2013-024 the borough assembly authorized the mayor to execute a loan agreement between the Kenai Peninsula Borough (KPB) and the City of Homer (City) to finance the utility special assessment district for the distribution of a gas line in the city of Homer through a bond; 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 of Homer's method of assessing all condominium units in the district was unlawful and the Alaska Supreme Court recently denied a petition for review of this ruling; and

**WHEREAS**, as a result of these court decisions, the City must reassess all condominiums in the district with an estimated reduction of about \$334,000; and

**WHEREAS**, the Homer city council is additionally considering 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**, because these proposed modifications to the assessments would reduce the amount of assessment payments to the City they would also reduce the funds available from the special assessment district to pay the bond; and

**WHEREAS**, the proposed amendments would allow the City to use Free Main Allowance funds to prepay to the borough the principal of the bond in an amount equal to the reduction in assessment amounts resulting from the condominium reassessments and the modification to the assessments; and

**WHEREAS**, the best interests of the borough would be served by agreeing to this First Amendment to Loan Agreement;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** The assembly hereby authorizes the mayor to execute the First Amendment to Loan Agreement between the City of Homer and the Kenai Peninsula Borough regarding the financing of the utility special assessment district, a copy of which is attached to this resolution.

**SECTION 2.** That this resolution takes effect immediately upon its adoption.

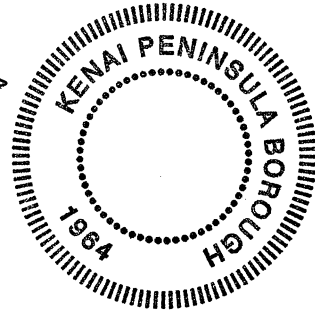
**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2015.**

*Dale L Bagley*

\_\_\_\_\_  
Dale Bagley, Assembly President

ATTEST:

*John Blankenship*  
\_\_\_\_\_  
John Blankenship, MMC, Borough Clerk



Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley  
No: None  
Absent: None

## FIRST AMENDMENT TO LOAN AGREEMENT

**DRAFT**

This FIRST AMENDMENT TO LOAN AGREEMENT ("Amendment"), dated as of June \_\_\_, 2015, amends the LOAN AGREEMENT ("Loan Agreement") dated as of March 25, 2013, by and between the KENAI PENINSULA BOROUGH ("Lender"), an Alaska municipal corporation, and the CITY OF HOMER ("Borrower"), an Alaska municipal corporation.

### R E C I T A L S

WHEREAS, by Ordinance 13-03(S)(2), adopted February 25, 2013, Borrower authorized the issuance to Lender 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 the Loan Agreement; and

WHEREAS, by Resolution 15-017, adopted March 23, 2015, Borrower 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 Borrower'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 City Council of Borrower 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, Borrower and Lender agree that it is in their mutual best interest to permit Borrower to 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 Borrower reassess condominium units in the District, or (ii) any decision by the City Council of Borrower 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.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto covenant and agree as follows:

Section 1. Section 3.03 of the Loan Agreement is amended by adding the following paragraphs at the end of the section:

Notwithstanding any other provision of this Agreement, Borrower and Lender agree that the total amount of assessments against condominium units in the District shall be reduced pursuant to the decision of the Superior Court in

*Castner v. City of Homer, et al.*, Case No. 3HO-13-00038CI, and Borrower shall prepay principal of the Loan in an amount equal to the amount of such reduction. Borrower may make this prepayment from Free Main Allowance and other reimbursements that Borrower receives from ENSTAR Natural Gas Company, provided that immediately following such a prepayment the amount in the Reserve Fund will not be less than the Reserve Requirement.

Notwithstanding any other provision of this Agreement, if the total amount of assessments against properties in the District is reduced due to action of the City Council of Borrower 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, Borrower shall prepay principal of the Loan in an amount equal to the amount of such reduction. Borrower may make this prepayment from Free Main Allowance and other reimbursements that Borrower receives from ENSTAR Natural Gas Company, and from any other legally available funding sources, provided that immediately following such a prepayment the amount in the Reserve Fund will not be less than the Reserve Requirement.

Lender consents to Borrower's amendment of Borrower's Ordinance 13-03(S)(2) to permit Borrower to apply Free Main Allowance and other reimbursements that Borrower receives from ENSTAR Natural Gas Company in the manner described in the preceding two paragraphs.

Section 2. Except as expressly amended herein, all terms and conditions of the Loan Agreement as originally executed shall remain in full force and effect.

IN WITNESS WHEREOF, the Lender and the Borrower have caused his Amendment to be executed in their respective names all by their duly authorized officers, as of the date first set forth above.

LENDER: KENAI PENINSULA BOROUGH

By: \_\_\_\_\_  
Mike Navarre, Mayor

ATTEST:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

**DRAFT**

BORROWER: CITY OF HOMER

By: \_\_\_\_\_  
Mary K. Koester, City Manager

ATTEST:

\_\_\_\_\_  
Jo Johnson, City Clerk

**DRAFT**