

## FIRST AMENDMENT TO LOAN AGREEMENT

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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

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BORROWER: CITY OF HOMER

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

ATTEST:

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

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