

Introduced by: Mayor  
Date: 09/20/16  
Action: Adopted  
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2016-050**

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

**WHEREAS,** pursuant to assembly authorization provided in Resolution 2013-024, the mayor executed a loan agreement on March 25, 2013, between the Kenai Peninsula Borough ("KPB") and the City of Homer ("City") to finance a special assessment district for a natural gas distribution system in the City through a the issuance of a Natural Gas Distribution special Assessment Bond ("Bond"); and

**WHEREAS,** on June 23, 2015, the KPB and City modified the loan agreement pursuant to Homer Ordinance 15-17(S) and KPB Resolution 2015-033 to provide for the prepayment of principal of the Bond and authorize the execution of a corresponding amendment to the loan agreement; and

**WHEREAS,** the loan agreement was amended again on April 20, 2016 pursuant to Homer Ordinance 16-03(S) and KPB Resolution 2016-006 to reflect the actual principal amount of the Bond, acknowledge payments made to date, change the future payment dates to shorten the length of the loan, and provide for the issuance of an amended bond; and

**WHEREAS,** the loan agreement currently requires that upon any prepayment of principal of the Bond the amortization of the principal of the Bond shall be adjusted so each remaining scheduled payment of principal and interest is in an equal amount; and

**WHEREAS,** adjusting the amortization of the principal of the Bond after each prepayment is unnecessary and imposes an administrative burden when scheduled payments of principal and interest on the Bond are only made annually; and

**WHEREAS,** the Homer City Council authorized the Third Amendment to Loan Agreement under its Ordinance 16-43 on August 22, 2016; and

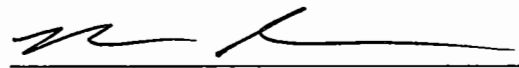
**WHEREAS,** the best interests of the borough would be served by agreeing to this Third Amendment to Loan Agreement;

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

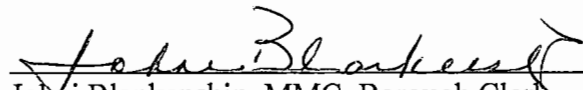
**SECTION 1.** The assembly hereby authorizes the mayor to execute a Third Amendment to Loan Agreement between the City of Homer and the Kenai Peninsula Borough regarding the financing of the utility special assessment district, substantially in the form attached to this resolution. This amendment revises Section 3.03 of the Loan Agreement by reorganizing it, deleting the requirement that upon any prepayment of principal on the Bond the amortization shall be adjusted, and replacing that with a requirement that the amortization of the principal of the bond be adjusted not less than five days before the due date of the annual installment of principal and interest on the bond.

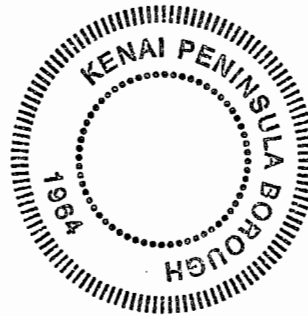
**SECTION 2.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF AUGUST, 2016.**

  
Blaine Gilman, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Bagley, Cooper, Dunne, Holmdahl, Johnson, Knopp, Ogle, Gilman  
No: None  
Absent: Welles

### THIRD AMENDMENT TO LOAN AGREEMENT

This THIRD AMENDMENT TO LOAN AGREEMENT ("Amendment"), dated as of September \_\_\_, 2016, 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 a principal amount equal to the aggregate amount of all advances under the Loan Agreement, but not to exceed \$12,700,000, and the execution and delivery of the Loan Agreement; and

WHEREAS, Section 3.03 of the Loan Agreement provides that prepayments of assessments shall be applied to prepay the principal of the Loan, and upon any such prepayment the amortization of the principal of the Loan shall be adjusted so that each remaining scheduled payment of principal and interest on the Loan shall be in an equal amount; and

WHEREAS, adjusting the amortization of the principal of the Loan upon each prepayment is unnecessary and imposes an administrative burden; and

WHEREAS, because installments of principal and interest on the Loan are due only once a year, it would be sufficient to adjust the amortization of the principal of the Loan once for all prepayments made since the last installment payment immediately before the next installment is due.

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 to read as follows:

#### Section 3.03 Prepayment.

(a) *Optional Prepayment.* The Borrower may prepay the outstanding principal of the Loan in whole or in part at any time in an amount equal to the principal amount of the Loan to be prepaid plus interest accrued thereon to the date of prepayment.

(b) *Mandatory Prepayment.*

(1) Prepayments of assessments shall be applied to prepay the principal of the Loan.

(2) 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.

(3) 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.

(4) 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.

(c) *Notice of Prepayment.* The Borrower shall give the Lender notice of any intended prepayment of the Loan not less than 10 nor more than 45 days prior to the date fixed for prepayment.

(d) *Loan Reamortization.* Not less than five days before the due date of each annual installment of principal and interest on the Loan, the amortization of the principal of the Loan shall be adjusted to take into account all prepayments of the outstanding principal of the Loan made since payment of the last annual installment of principal and interest, so that each remaining scheduled payment of principal and interest on the Loan shall be in an equal amount.

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

IN WITNESS WHEREOF, the Lender and the Borrower have caused this 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

BORROWER: CITY OF HOMER

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

ATTEST:

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