

ORDINANCE NO. 5918, AS AMENDED

**AN ORDINANCE TO AUTHORIZE A LOAN TO AURORA ENERGY LLC
FOR UPGRADES TO UTILITIES AS PART OF THE SECOND
AVENUE/WICKERSHAM ROAD RECONSTRUCTION PROJECT**

WHEREAS, the City planned the reconstruction of Wickersham Street and 2nd Avenue from Barnette Street to Cowles Street for 2014 or 2015; and

WHEREAS, in the fall of 2012, the City was notified that the project must be constructed in 2013 or the City risks losing nearly \$1 million in federal grant funds; and

WHEREAS, because of this news, the City has aggressively accelerated the design for this project and hopes to advertise it in April or May of 2013, with substantial completion by September 30, 2013; and

WHEREAS, the utility facilities owned by Aurora that underlie the streets to be reconstructed are at or near the end of their projected useful life; and

WHEREAS, if the utility upgrades are not done at the same time as the reconstruction project, the newly improved roads may need to be excavated in the near future; and

WHEREAS, tearing up newly reconstructed roads would be a wasteful expense, would be harmful to the roads, and would make the residents and businesses in this area undergo twice the amount of construction disruption; and

WHEREAS, to keep this project moving forward so as not to risk the loss of the federal grant funds, the City and Aurora have negotiated an agreement whereby the City would loan/advance some of the funds needed for the replacement of their utility facilities during the reconstruction project; the current estimated loan is \$276,962, subject to amendment; and


WHEREAS, loaning/advancing funds for the upgrade of Aurora's utility facilities serves a public purpose that will promote the public welfare,

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. That the City may loan or advance the funds needed to replace Aurora Energy's utility facilities lying within the project boundaries of the Wickersham Street and 2nd Avenue from Barnette Street to Cowles Street project. The terms of the loan are set forth in the loan agreement identified as Attachment A.

Section 2. That the Mayor is hereby authorized to execute contracts and such other documents as may be necessary to effectuate the loans/advances authorized by this ordinance.

Section 3. That the effective date of this ordinance will be the 11th day of May 2013.



Jerry Cleworth, City Mayor

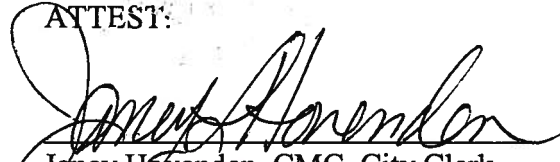
AYES: Staley, Matherly, Gatewood, Hilling, Eberhart, Walley

NAYS: None

ABSENT: None


ADOPTED: May 06, 2013

ATTEST:



Janey Hovenden, CMC, City Clerk

APPROVED AS TO FORM:



Paul Ewers, City Attorney

ATTACHMENT A

AGREEMENT FOR SHARED COSTS OF UTILITY PROJECT

As Amended on May 1, 2013

between

The City of Fairbanks

and

Aurora Energy, LLC

RECITALS

For the reasons set forth in Ordinance No. 5918 and under the authority granted therein, the City of Fairbanks and Aurora Energy, LLC, enter into this Agreement For Shared Costs of Utility Project.

TERMS AND CONDITIONS

1. Aurora Energy, LLC (hereinafter "Aurora"), whose address is 100 Cushman Street, Suite 210, Fairbanks, Alaska, 99701, and the City of Fairbanks (hereinafter "the City"), whose address is 800 Cushman Street, Fairbanks, Alaska, 99701, agree to share the total project costs for Bid Item 668(1) – Aurora Energy Relocation, Wickersham Street Upgrade, State Project 62049 (as fully described in the attached Project Scope) for replacement of Aurora's utility facilities as follows:

- a. The City's share shall be 27%.
- b. Aurora's share shall be 73% of the project costs.
- c. Aurora will pay 30% of its share to the City in 2013. The City will loan/advance the balance to Aurora, to be repaid in five annual equal payments with interest on the unpaid balance accruing at the rate of six percent (6.0%) per annum.

For example, using the current estimated total project cost of **\$542,000** (total of the estimated \$208,764 cost of Aurora supplied materials and estimated \$333,236 cost of Bid Item 668(1)), the City's share would be \$146,340 and Aurora's share would be \$395,660. Aurora's 2013 payment would be \$118,698 and the loan/advance to Aurora would be \$276,962. The City and Aurora agree that each party's design costs and construction management expenses offset equally and net to a zero impact.

2. The principal and interest shall be payable to the City at 800 Cushman Street, Fairbanks, Alaska, 99701 or at such other place as the City shall designate in writing with the first payment will be due on the 1st day of November 2013. Aurora has the right to prepay any payment or the entire loan balance at any time without penalty.

3. Any and all steam pipe and facilities constructed or purchased with proceeds from the City's loan to Aurora will remain the property of the City until such time as the loan is paid in full by Aurora. Upon full repayment by Aurora, the City will transfer title to Aurora of assets acquired with loan funds.

4. The City will have the right to secure its interest in all property acquired with loan proceeds by any legal means available.

5. In the event of partial prepayment of this obligation, the payment funds will be applied towards the satisfaction of those payments next falling due hereunder. Payment proceeds will be applied first to the satisfaction of accrued interest up to the actual date of such payment, with the excess to be applied in reduction of outstanding principal.

6. In the event that any payment falling due hereunder is not paid within thirty (30) days after the due date thereof, the City may, at any time while such delinquency continues, declare the entire unpaid balance of this obligation, to include the outstanding principal balance, accrued interest, and all other amounts payable, immediately due and owing. Upon default of payment, the City shall give Aurora written notice of default via U.S. Postal Service, registered mail. Aurora will have 30 days to cure after receipt of written notice of default. Aurora may cure the default by making full payment of any principal and accrued interest (including interest on these amounts) whose payment to the City is overdue. If the default is not cured, the City has the right to an offset for any utility payments owned to Aurora as authorized by Fairbanks General Code Section 2-711.

7. The City may delay or forgo enforcing any of its rights or remedies under this Agreement without losing them.

8. Aurora may not assign or transfer any of its rights or obligations under this Agreement without the express written consent of the City.

11. The benefits of this Agreement shall inure to and the burdens shall be binding upon the lawful successors and assigns of the respective parties.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska, with all disputes over the terms of this agreement to be adjudicated by the Alaska Superior Court, Fourth Judicial District, at Fairbanks, Alaska.

THE CITY OF FAIRBANKS

Date: _____

By: Jerry Cleworth, Mayor

State of Alaska)

) ss

ACKNOWLEDGMENT

Fourth Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____ 2013, before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared Jerry Cleworth, the Mayor of the City of Fairbanks, and that he acknowledged before me that he executed the same on behalf of said City with authority so to do.

IN WITNESS WHEREOF, my hand and official seal.

Notary Public for the State of Alaska
My Commission Expires: _____

AURORA ENERGY, LLC

Date: _____

By: _____
Its: President

State of Alaska)
) ss
Fourth Judicial District)

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2013, before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared _____, the President of Aurora Energy, LLC, and that she/he acknowledged before me that she/he executed the same on behalf of said corporation with authority so to do.

IN WITNESS WHEREOF, my hand and official seal.

Notary Public for the State of Alaska
My Commission Expires: _____

**Project Scope, Bid Item 668(1) – Aurora Energy Relocation
Wickersham Street Upgrade, State Project 62049**

Bid Item 668(1) will cover all labor, equipment, materials and inspection to abandon in place the existing Aurora steam and condensate facilities and install new steam and condensate facilities within the project limits. The Engineer’s total Construction Cost **Estimate** is \$542,000:

Wickersham AE Steam Replacement			
(Existing Aurora Energy Steam and Condensate System Relocation)			
Estimated Total Costs - 05/02/13			
	27% Project	73% AE	Total
Contractor Cost - AE Relocation	\$ 89,973.72	\$ 243,262.28	\$ 333,236.00
Material Cost	\$ 56,366.28	\$ 152,397.72	\$ 208,764.00
Construction Subtotal	\$ 146,340.00	\$ 395,660.00	\$ 542,000.00