



City of Grand Island

Tuesday, July 29, 2014

Special Meeting/Study Session

Item F1

#9493 - Consideration of Authorizing Clean Water State Revolving Fund Loan (Second and Final Reading)

Staff Contact: Jaye Monter, Finance Director

Council Agenda Memo

From: Jaye Monter, City Finance Director

Meeting: July 29, 2014

Subject: Consideration of Authorizing Clean Water State Revolving Fund (CWSRF) Loans
(Second and Final Reading)

Item #'s: F-1

Presenter(s): Jaye Monter, Finance Director
Michael Rogers, Gilmore & Bell, P.C.

Background

On June 10, 2014, a public hearing was held and resolution 2014-162 was approved by Council in support of receiving up to \$40,000,000 in Clean Water State Revolving Fund (CWSRF) loans administered by the Nebraska Department of Environmental Quality (NDEQ) to continue Sanitary Sewer Collection System and Wastewater Treatment Plant Improvement.

As presented at the public hearing, CWSRF loan terms will provide repayment of principal and interest beginning 3 years following the award of each loan or at initiation of each project, whichever is sooner. Interest rates will range from 2 ¼% -2 1/2% which include a 1% administration fee. Projects classified as “Green” receive a ¼% lower interest rate.

Public Works Staff has been working with Black and Veatch and Olsson Associations to develop and implement a 5 Year Wastewater Capital Plan for the City of Grand Island based on the following:

- The comprehensive plan in CH2M Hill’s “Wastewater Collection and Treatment Systems Comprehensive Plan Update”
- Black and Veatch’s “Wastewater Treatment Plant and Collection System Improvements – Draft Technical Memorandum #2 Hydraulic Model Validation and Analysis”
- Wastewater Projects intended to accommodate growth

Examples of Wastewater Projects included in the 5 Year Wastewater Capital Improvement Plan are:

- Plant – Headworks
- Sanitary Sewer Collection System Rehabilitation
 - South and West Interceptor Rehabilitation
 - 4th and 5th Eddy to Vine Rehabilitation
 - North Interceptor Phase I
 - North Interceptor Phase II
- Growth – 281 Sanitary Sewer Improvements (District 530T)

As discussed at the meeting on June 10, 2014, it is possible to advance the project schedule to complete projects sooner than originally expected with the financing plan presented. Lift Stations are high cost items that increase the creation of damaging chemicals such as hydrogen sulfide (the chemical primarily responsible for shortening the life of the Northeast Interceptor by more than 30%). The new Headworks and Phases 1 and 2 of the North Interceptor allow 8 lift stations to be abandoned. Accelerating construction will allow an additional 3 lift stations to be abandoned, saving operating costs and extending the life of the new infrastructure.

Discussion

The CWSRF loan with NDEQ will be a parity obligation with the City's outstanding 2013 Sewer Revenue Bonds issued on September 17, 2013 in the principal amount of \$35,430,000, which is currently the only outstanding debt payable from revenues of the City's wastewater system. The City will maintain the ability to issue additional bonds under this Ordinance in the same manner as the ordinance governing the 2013 Sewer Revenue Bonds. Also, the debt service coverage requirements will remain the same as under the ordinance governing the 2013 Sewer Revenue Bonds at 1.1 times ongoing coverage, and 1.25 times for the issuance of Additional Bonds.

The Ordinance gives formal approval to the NDEQ borrowing in a principal amount of up to \$40,000,000. Subsequently, each loan document with NDEQ will be presented and approved by Council resolution.

This additional financing will be within the constraints of the rate study provided by Black and Veatch in September of 2013 approved by Council.

Alternatives

Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council pass the ordinance authorizing up to \$40,000,000 in financing from the CWSRF Loan Program administered by NDEQ.

Sample Motion

Move to approve the ordinance authorizing up to \$40,000,000 in financing from the CWSRF Loan Program administered by NDEQ on second and final reading.

LOAN CONTRACT
(Governmental Borrower)

Between

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

and

CITY OF GRAND ISLAND, NEBRASKA

NDEQ Project No. _____

DATED AS OF _____, 20__

LOAN CONTRACT
BETWEEN THE
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
THE CITY OF GRAND ISLAND, NEBRASKA
PROJECT NO. _____

This Loan Contract No. _____ (hereinafter "Loan Contract"), is entered into by and between the State of Nebraska, acting by and through the Nebraska Department of Environmental Quality (hereinafter "NDEQ") and the City of Grand Island, Nebraska, (hereinafter "Municipality").

WITNESSETH THAT

WHEREAS, the Federal Water Quality Act of 1987 (hereinafter "Federal Act") established a state revolving fund program; and

WHEREAS, to fund the state revolving fund program, the Environmental Protection Agency (hereinafter "EPA") will make annual capitalization grants to the states under CFDA #66.458 (Capitalization Grants for State Revolving Fund), on the condition that each state provide an appropriate match for such state's revolving fund; and

WHEREAS, Neb. Rev. Stat. §81-15,153 empowers the NDEQ to loan available funds in the Wastewater Treatment Facilities Construction Loan Fund (hereinafter "Fund") to municipalities pursuant to the Wastewater Treatment Facilities Construction Assistance Act (hereinafter "Act") and rules and regulations adopted under such Act; and

WHEREAS, under the Act, the Director of NDEQ is given the responsibility for administration and management of the Fund; and

WHEREAS, the Director of NDEQ and the Nebraska Investment Finance Authority (hereinafter "NIFA") have entered into a Memorandum of Understanding effective November 1, 2000 (hereinafter "MOU"), to define the cooperative relationship between NDEQ and NIFA to jointly administer certain provisions of the Act; and

WHEREAS, the NIFA is authorized under Neb. Rev. Stat. §58-201 et. seq. and the Act to issue revenue bonds for the purpose of providing funds for NDEQ to loan to Municipalities within the State of Nebraska for the acquisition, construction, improvement, repair, rehabilitation, or extension of municipal wastewater treatment projects (as defined in the Act), in order to provide the state match requirements of the Federal Act; and

WHEREAS, pursuant to such authorization, NIFA proposes to issue its Wastewater Treatment Facilities Construction Loan Fund revenue bonds for the purpose of providing funds to NDEQ to loan to Nebraska Municipalities to pay those eligible portions of the costs of acquiring, constructing, improving, repairing, rehabilitating or extending municipal wastewater treatment projects (as defined in the Act), in order to provide the state match requirements of the Federal Act; and

WHEREAS, NDEQ intends to enter into a pledge agreement with NIFA (the "Pledge Agreement"), pursuant to which NDEQ will pledge the interest portion of Loan Repayments (as defined herein) and certain other revenues to NIFA for the payment of the principal of, redemption premium, if any, and interest on Clean Water State Revolving Fund Revenue Bonds which may be issued by NIFA from time to time; and

WHEREAS, the City of Grand Island, Nebraska is a "Municipality" as defined in Neb. Rev. Stat. §81-15,149(7); and

WHEREAS, the project (hereinafter "Project") to be financed under this Loan Contract, includes the construction of sanitary sewer collection system improvements. Specifically [phase II of the North Interceptor renovation, extension of the Husker Highway sewer, a new gravity sewer to replace the existing lift station and force main serving the Rainbow Lakes area, replacement of Lift Station No. 20 force main and a new gravity sewer to replace existing Lift Station No. 6 and Lift Station No. 14. These projects may allow the City to abandon as many as 10 lift stations.]

WHEREAS, the Project Cost is based upon estimates of the Municipality and at times during or at completion of construction the loan amount may be adjusted by the NDEQ pursuant to Section 2.01; and

WHEREAS, the Project is included in the NDEQ Intended Use Plan; and

WHEREAS, the NDEQ has approved the Municipality's application for a Loan from federal funds and the state match requirement if and when received by and made available to NDEQ pursuant to the Federal Act and the Act to finance Project Costs;

NOW, THEREFORE, for and in consideration of the award of the Loan Contract by NDEQ, the Municipality agrees to complete its Project and to perform under this Loan Contract in accordance with the conditions, covenants and procedures set forth below:

ARTICLE I

DEFINITIONS

Definitions. The following terms as used in this Loan Contract shall, unless the context clearly requires otherwise, have the following meanings:

"Act" means the Wastewater Treatment Facilities Construction Assistance Act, Neb. Rev. Stat. §81-15,147 et seq., as amended.

"Authorized Representative" means the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Municipality to perform any act or execute any document relating to this Loan Contract.

"Cut-off Date" means the date established by NDEQ at the Project's final inspection prior to which the Municipality will make the final disbursement request for eligible Project Costs.

"Due Date" means the dates specified for payment of principal and interest on the Loan as specified in Section 2.05.

"Event of Default" means any occurrence or event specified in Article V.

"Fund" means the Wastewater Treatment Facilities Construction Loan Fund.

"Initiation of Operation" means the date on which the Municipality places the Project in operation or the Project is capable of being placed in operation for the purposes for which it was planned, designed, and built.

"Late Payment" means any payment that is not received within fifteen days of the due date.

"Loan" means the loan made by NDEQ to the Municipality to finance or refinance a portion of the Costs of the Project pursuant to this Loan Contract.

"Loan Amount" means the amount specified in Section 2.01 hereof which NDEQ has agreed to disburse to the Municipality subject to the terms, provisions, and conditions of this Loan Contract and the availability of State and Federal Funds.

"Loan Contract" means this Loan Contract, including the Exhibits attached hereto, as it may be properly supplemented, modified or amended.

"Loan Repayments" means the payments payable by the Municipality pursuant to Section 2.05 of this Loan Contract.

"Loan Terms" means the terms of this Loan Contract provided in Article II of this Loan Contract.

"Municipality" means the Nebraska municipality that is a party to and is described in the first paragraph of this Loan Contract, and its successors and assigns.

"NDEQ" means the Nebraska Department of Environmental Quality established pursuant to Neb. Rev. Stat. §81-1501 et. seq., as amended.

"NIFA" means the Nebraska Investment Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns established pursuant to Neb. Rev. Stat. §58-201 et. seq., as amended.

"Project" means the acquisition, construction, improvement, repair, rehabilitation or extension of Wastewater Treatment Works and/or Sanitary Sewer Collection Systems of the Municipality described herein, which constitutes a project for which NDEQ is making a Loan to the Municipality pursuant to this Loan Contract.

"Project Costs" means eligible costs associated with secondary or tertiary treatment and appurtenances; infiltration and inflow correction, major sewer system rehabilitation; new collector sewers and appurtenances; new interceptors and appurtenances; land integral to the treatment process; correction of combined sewer overflows; Sanitary Sewer Collection System; and other costs eligible under the Federal Act including capitalized interest. Project Costs do not include the costs of water rights and for land which is not integral to the treatment process, easements and rights-of-way, legal costs, fiscal agents fees, operation and maintenance costs and municipal administrative costs. Project Costs are described in Attachment B.

"Regulations" means Title 131, Nebraska Department of Environmental Quality, and any amendments thereto promulgated by NDEQ pursuant to the Act.

"Retainage" means construction costs held back by the municipality from the payments due to the contractor to assure satisfactory completion of the construction contract.

"State" means the State of Nebraska acting, unless otherwise specifically indicated, by and through NDEQ and its successors and assigns.

"Trustee" means the trustee under any trust indenture with respect to the revenue bonds the proceeds of which are deposited in the Loan Fund.

"User Charge System" means the methodology used to assess user charge fee(s) for the users of the Wastewater Treatment Works within the Municipality's jurisdiction.

"Wastewater Treatment Works" means the structures, equipment and processes required to collect, transport and treat domestic or industrial wastes and to dispose of the effluent and sludges.

"Wastewater User Charge" means the revenues derived by the Municipality from the fees and charges for the use and services furnished by or through the Municipality's Wastewater Treatment Works.

ARTICLE II

LOAN CONDITIONS AND TERMS

Section 2.01. Amount of the Loan. Subject to all of the terms, provisions and conditions of this Loan Contract, and subject to the availability of State and Federal funds, NDEQ will loan _____ dollars (\$_____) to the Municipality to pay a portion of the Project Costs described in Attachment B hereto. The final actual amount of the Loan may be reduced without revision of any other terms, provisions or conditions of this Loan Contract, other than adjustment by NDEQ to the Repayment Schedule in Attachment A hereto, to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments. The Municipality must make provision for the payment of all eligible costs exceeding the Loan Amount. The NDEQ may provide supplemental loan funds through a separate loan contract amendment. Receipt of any supplemental loan funds is dependent on availability of unobligated funds in the Fund and any obligation of additional funds to this Project is at the sole discretion of NDEQ with such revised or additional terms, conditions, and covenants as NDEQ may require.

Section 2.02. Term of the Loan. The Municipality agrees to fully repay the Loan with interest on the date of Initiation of Operation or to begin repayment of principal and interest on the Loan within one (1) year from the date of Initiation of Operation but no later than three (3) years from the date of the Loan, and to repay such Loan in full no later than twenty (20) years from Initiation of Operation and to pay all principal, interest, administrative fees and penalty fees when due. The municipality shall provide NDEQ 60 days written notice of its intent to repay the Loan all or in part on the date of the Initiation of Operation.

Section 2.03. Interest Rate. The interest rate on this loan is determined by the NDEQ pursuant to Regulations and the Intended Use Plan. The interest rate on this loan during construction is ____ percent and after the date of Initiation of Operation is the interest rate of _____ percent per annum (calculated on the basis of a year equaling 360 days made up of 12 months of 30 days each) to be paid as set out in Attachment A. For the purposes of this paragraph "construction" shall mean the period between the date of this Loan and the date of Initiation of Operation.

Section 2.04. Disbursement Of Loan. Upon receipt of a disbursement request for work completed and certification by the Municipality, the NDEQ agrees to disburse the principal amount of the loan set out in Section 2.01 of this Article during the progress of the Project for Project Costs. The Municipality may obtain a copy of the disbursement record upon request to NDEQ. Each disbursement shall be upon ACH by the State of Nebraska and shall be equal to that portion of the unobligated principal amount incurred to the date of the request for disbursement from the Municipality. Submitted requests for disbursement must be supported by proper invoices for Project Costs, a certificate of the Authorized Representative to the effect that all representations made in this Loan remain true as of the date of the request and that no adverse developments affecting the financial condition of the Municipality or its ability to complete the Project or to repay the Loan have occurred since the date of this Loan, or of the previous disbursement, and other documentation acceptable to and approved by the NDEQ. All disbursement requests must be made prior to the Cut-off Date established at the Project's final inspection by NDEQ.

The Municipality may request disbursement for eligible Project Costs, when such Project Costs have been incurred and are due and payable to project contractors. Retainage withheld by the municipality on contracts will be withheld by the NDEQ until such Retainage is either reduced or released to the contractor by the Municipality. However, actual payment of such Project Costs by the Municipality is not required as a condition of a payment request.

The Municipality shall submit a draft of the operation and maintenance manual for the Project to the NDEQ before disbursements exceed 75% of the Project Costs. The Municipality shall submit a final operation and maintenance manual to the NDEQ and receive approval before disbursements exceed 95% of the Project Costs or final disbursement whichever occurs first.

Section 2.05. Loan Payments.

(a) Principal and Interest Payments. The Municipality shall pay to the NDEQ, or at the direction of NDEQ, to NIFA or the Trustee on or before the due dates specified below, but only from the sources specified in Section 3.02 hereof, appropriate installments of principal and interest until all principal and interest due on the Loan to the NDEQ has been paid in full. Installments of principal and interest (total Loan service) shall be paid semiannually on December 15 and June 15 of each year in accordance with the Loan Repayment Schedule in Attachment A.

The NDEQ will send the Municipality an invoice 30 days prior to the due date. When a loan disbursement occurs after invoices are mailed, the NDEQ will include adjustments for interest and fee charges on the next semiannual invoice.

Section 2.05(b) Prepayment of the Loan. The Municipality may prepay the Loan, together with any accrued interest in whole or in part, at any time without penalty upon giving 60 days written notice to NDEQ of its intent to prepay. The Municipality may make a partial prepayment of the Loan only if the prepayment amount is greater than the lesser of 10% of the outstanding amount of the Loan or \$50,000. A new Attachment A will be prepared by NDEQ following receipt of any partial prepayment of the Loan.

Section 2.06. Administrative Fee. The Municipality shall pay to the NDEQ, or at the direction of NDEQ, to NIFA or the Trustee, an annual administrative fee of 1% per annum of the Loan Amount to be paid in semiannual installments of 0.5% of the Loan Amount outstanding on the date invoices are mailed in accordance with the Loan Repayment Schedule in Attachment A. The fee is waived for the first year of the Loan.

Section 2.07. Schedule Of Compliance. The Municipality agrees to perform steps of the Project in accordance with the following schedule of milestone dates.

- (a). _____, 20__ Loan date
- (b). _____, 20__ Construction start
- (c). _____, 20__ Initiation of Operation
- (d). _____, 20__ Substantial completion of construction

Section 2.08. Disadvantaged Business Enterprises (Small Business Enterprise/Minority Business Enterprise/Women's Business Enterprise/Small Business Rural Area), including Historically Black Colleges and Universities (hereinafter "DBE/HBCU"). The Municipality agrees that ten percent of the Loan Amount shall be the objective for proposed DBE, HBCU subagreement work under this Loan Contract. The Municipality shall take affirmative steps to assure that small, minority, and women's businesses pursuant to 40 CFR 31.36(e) and small businesses rural areas pursuant to 13 CFR 121.2 are used when possible as sources of supplies, construction and services. Affirmative steps shall include the following:

- (a) Placing disadvantaged business enterprises, including minority, women's, small businesses and small businesses in a rural area and historically black colleges and universities on solicitation lists;
- (b) Assuring that disadvantaged business enterprises, historically black colleges and universities are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged business enterprises;
- (d) Establishing delivery schedules, where the requirement permits, which encourages participation by disadvantaged business enterprises;

(e) Using the services and assistance of the Small Business Administration and Minority Business Development Agency of the U. S. Department of Commerce; and

(f) Requiring the prime contractor to take the affirmative steps listed above.

In addition, the Municipality agrees to submit to the NDEQ a completed SF 334 form within 15 days after the end of each federal fiscal quarter during which the Municipality or its contractors award any subagreements to a disadvantaged business enterprise for building and building-related services and supplies.

Section 2.09. Sewer Use Ordinances/User Charge Systems. The Municipality agrees to obtain approval from the NDEQ of its sewer use ordinance/User Charge System, and to adopt and implement any necessary changes before the Project is placed in operation. The Municipality agrees that it shall not modify or amend, or make additions to or deletions from its sewer use ordinance/User Charge System without the consent of NDEQ during the term of the Loan Contract.

Section 2.10. Other Conditions and Terms.

(a) Engineering Services. The Municipality shall provide and maintain competent and adequate engineering supervision and resident inspection during construction.

(b) Construction Contract Award. The Municipality shall obtain NDEQ concurrence and authorization prior to award of the construction contract.

(c) Initiation of Operation. The Municipality shall provide written notification to the NDEQ of the date of Initiation of Operation of the Project.

(d) Construction Completion. The Municipality shall provide written notification to the NDEQ of the construction completion date of the Project.

(e) Contractor's Security. The Municipality agrees to require any contractor of the Project to post separate performance and payment bonds or other security approved by NDEQ in the amount of the bid.

(f) Certified Operator. The Municipality agrees to provide a certified operator pursuant to Title 197 - Rules and Regulations for the Certification of Wastewater Treatment Facility Operators in Nebraska.

(g) Site Title and Easements. The Municipality must certify that site title for all easements and rights-of-way necessary to allow construction of the Project have been obtained prior to award of the construction contract (i.e., all real property has been acquired, bonafide options have been taken or formal condemnation proceedings have been initiated for necessary real property).

(h) Contractors Payments. The Municipality agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of the construction contract.

(i) Bid Solicitation. The Municipality agrees that all bid solicitations will include the following statement:

"The prospective participants must certify by submittal of EPA Form 5700-49 "Certification Regarding Debarment, Suspension and Other Responsibility Matters" that, to the best of its knowledge and belief, it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency."

(j) Debarment Suspension. The Municipality acknowledges that doing business with any party appearing in the "List of Parties Excluded from Federal Procurement or Non Procurement Programs" may result in disallowance of federal funds under this Loan Contract and may also result in suspension or debarment under 40 CFR Part 32.

(k) Other Federal Requirements. The Municipality agrees to comply with other applicable Federal Requirements in Attachment D hereto.

(l) Project Sign. The Municipality agrees to display the project sign provided by NDEQ. The sign will remain the property of NDEQ and will be retrieved about one year after project completion. The Municipality will remove the sign for NDEQ when requested.

(m) Employment under Public Contracts, LB 403. The Borrower agrees to comply with the provisions of LB403, approved by the Governor April 8, 2009. The following language is required and will be included in all contracts made with contractors and is a pass through requirement for his or her subcontractors.

"The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. If the Contractor is an individual or sole proprietorship, the following applies: 1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us; 2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program; and, 3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108"

(n) Prevailing Wage. All laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Public Law 111-88 shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.App.) and section 3145 of title 40, United States Code.

The Borrower is responsible to insure compliance with the prevailing wage requirements and will include the following information in the contract documents:

Contractors and subcontractors on USEPA federally assisted construction projects are required to pay their laborers and mechanics not less than those established by the U.S. Department of Labor. A current wage decision containing the appropriate building and/or heavy type rates shall be included in the specifications. In addition, labor standard provisions, Davis Bacon and Related Acts, for federally assisted contracts shall be placed in the federal assurances of project specifications.

If an areawide decision or classification does not exist for the type of work to be performed, building or heavy, a decision or request for authorization of additional classification and rate must be requested from the Labor Department using the Standard Form 1444, Request for Authorization of Additional Classification

and Rate available on the web and can be completed on line at: <http://www.wdol.gov/docs/sf1444.pdf>. These types of decisions or classifications are project specific, i.e. they are applicable only to the project for which they are requested and may not be used on any other project. Project decisions generally have an expiration date of 180 days after the date of issuance. Modifications or reissued decisions are applicable to a project if received by NDEQ not less than 10 days prior to bid opening. Modifications to classification and wage rates after bid opening shall be paid to all workers performing work in the new or modified classification from the first day on which work is performed in the additional classification as approved by the Administrator of the Wage and Hour Division, Employment Standards Administration, US Department of Labor.

Weekly Payrolls shall be submitted by the contractor to the Borrower or the Borrower's representative utilizing the Department of Labor Form WH-347. A webform which can be completed on-line is found at <http://www.dol.gov/whd/forms/wh347.pdf>, instructions are also found on-line. The Borrower may also be required to submit copies of the Weekly Payrolls to NDEQ. As to each payroll copy received, the Borrower shall provide written confirmation on a form supplied by NDEQ indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The Borrower or the Borrower's representative shall periodically interview a sufficient number of the contractor's or subcontractor's employees entitled to Davis Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Borrower must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 form are available at <http://www.gsa.gov>. At a minimum, the Borrower or the Borrower's representative should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. EPA has issued a waiver from the two week interview interval requirements by a November 16, 2012, EPA Memorandum, Class Deviation – Prevailing Wage Interview Interval Requirement in Clean Water and Drinking Water State Revolving Funds (CWSRF and DWSRF) Capitalization Grants. The provision for two week interview intervals is not a regulatory or statutory requirement and has been superseded by the class deviation. The Borrower or Borrower's representative should conduct such interviews if and when the Borrower or Borrower's representative finds it necessary to ensure that contractors are complying with the prevailing wage requirements.

(o) Human Trafficking. Under the requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

"The Municipality, its employees, sub-recipients under this award, and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award."

(p) Buy American Iron and Steel Products. Section 436(a)(1) of H.R. 3547, "Consolidated Appropriations Act, 2014," requires that none of the appropriated funds for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund may be used for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States. These Buy American requirements apply for the entirety of the construction activities financed by the Loan Contract unless (a) a waiver is provided to the Assistance Recipient by EPA or (b) compliance would be inconsistent with United States obligations under international agreements. In order to receive a waiver, the Assistance Recipient must send a written request to the EPA Administrator. A decision will be made based on the following criteria:

(1) The requirement is inconsistent with the public interest for purposes of the project for which a waiver has been requested,

(2) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality, or

(3) Inclusion of iron and steel products produced in the United States will increase the overall cost of the project by more than 25 percent.

If the Administrator receives a request for a waiver, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency. EPA will provide additional guidance on this provision as it becomes available.

The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials."

Iron and steel products that are not 100% compliant with the above requirements should be identified early in the planning and design process and the appropriate justification prepared and waiver process followed to meet the requirement before the project goes to construction.

Buy American Iron and Steel (AIS) requirements are waived if a project has submitted plans and specifications for approval to a State agency, prior to enactment of the Appropriations Act or January 17, 2014 in accordance with the EPA nationwide plans and specifications waiver signed April 15, 2014.

In addition, EPA has granted a nationwide waiver for de minimis incidental components for eligible CWSRF or DWSRF projects, signed April 15, 2014. This action permits the use of products when they occur in de minimis incidental components for such projects funded by the Act that may otherwise be prohibited under section 436(a). Example of incidental components could include small washers, screws, fasteners, (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc. Funds used for such de minimis incidental non-AIS compliant components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project. The cost of an individual non-AIS compliant item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.

EPA has provided additional guidance on these AIS provisions which can be found on EPA's website at http://water.epa.gov/grants_funding/aisrequirement.cfm

ARTICLE III

REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

Section 3.01. Representations of the Municipality. The Municipality represents as follows:

(a) Organization and Authority.

(1) The Municipality is a city, town, village, district, association, or other public body created by or pursuant to the constitution and statutes of the State of Nebraska.

(2) The Municipality has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its Wastewater Treatment Works, to carry on its

activities relating thereto, to execute and deliver this Loan Contract, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan.

(3) The proceedings of the Municipality's governing body approving this Loan Contract and authorizing its execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project have been duly and lawfully adopted.

(4) This Loan Contract has been duly authorized, executed and delivered on behalf of the Municipality, and constitutes the legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

(b) Full Disclosure. To the best knowledge of the Municipality, after due investigation, there is no fact that the Municipality has not disclosed to NDEQ in writing on the Municipality's application for the Loan or otherwise anything that materially adversely affects or that will materially adversely affect the properties, activities of its Wastewater Treatment Works and Sanitary Sewer Collection System, or the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Contract.

(c) Non-Litigation. There is no controversy, suit or other proceeding of any kind pending or threatened questioning, disputing or affecting in any way the legal organization of the Municipality or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act taken in connection with obtaining the Loan, or the constitutionality or validity of the indebtedness represented by the Loan Contract, or any of the proceedings had in relation to the authorization or execution or the pledging of the revenues of the Municipality's Wastewater Treatment Works, or the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Contract.

(d) Compliance with Existing Laws and Agreements. The authorization, execution and delivery of this Loan Contract by the Municipality, and the performance by the Municipality of its duties, covenants, obligations and agreements there under will not result in any breach of any existing law or agreement to which the Municipality is a party.

(e) No Defaults. No event has occurred and no condition exists that would constitute an Event of Default. The Municipality is not in violation of any agreement, which would materially adversely affect the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Contract.

(f) Governmental Consent. The Municipality has obtained all permits and approvals required to date under this Loan Contract or for the undertaking or completion of the Project and the financing or refinancing thereof. The Municipality has complied with all applicable provisions of law requiring any notification, with any governmental body or officer in connection with this Loan Contract or with the undertaking or completion of the Project and the financing or refinancing thereof.

(g) Compliance with Law. The Municipality:

(1) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Regulations, with which the failure to comply would materially adversely affect the ability of the Municipality to conduct its activities, enter into this Loan Contract or undertake or complete the Project; and

(2) has obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property which, if not obtained, would materially adversely affect the ability of the Municipality to complete the Project.

(h) Use of Loan Proceeds. The Municipality will apply the proceeds of the Loan as described in Article II: (1) to finance or refinance a portion of the Project Costs; and (2) where applicable, to reimburse the Municipality for a portion of the Project Costs, which portion was paid or incurred in anticipation of reimbursement by NDEQ and is eligible for such reimbursement pursuant to the Regulations. All of such costs constitute Project Costs for which NDEQ is authorized to make Loans to the Municipality pursuant to the Act and the Regulations.

(i) Project Costs. The Municipality certifies that the Project Costs, as listed in Attachment B, are reasonable and accurate estimations and, upon direction of NDEQ, will supply the same with a certificate from its engineer stating that such costs are reasonable and accurate estimations, taking into account investment income, if any, to be realized during the course of construction of the Project and other money that would, absent the Loan, have been used to pay the Project Costs.

Section 3.02. Particular Covenants of the Municipality.

(a) Dedicated Source of Revenue for Repayment of the Loan. The Municipality hereby pledges the Wastewater User Charge as the dedicated source of revenue for the repayment of the Loan. The pledge herein provided for is made in accordance with and under the terms of Ordinance No. ____ and is on an equal basis with the pledges made under the ordinances described below in this Subsection 3.02(a). The Municipality shall fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Municipality's Wastewater Treatment Works and Sanitary Sewer Collection System, including all improvements and additions hereafter constructed or acquired by the Municipality, as will provide revenues sufficient to (i) pay the cost of the operation and maintenance, and replacement of the Wastewater Treatment Works and Sanitary Sewer Collection System, (ii) pay at least 110% of the principal of and interest on the Loan as and when the same become due, and (iii) pay all other amounts due at any time under this Loan Contract, provided, however, the lien of NDEQ on the revenues of the Municipality's Wastewater Treatment Works and Sanitary Sewer Collection System shall be on a parity with the lien on such revenues of the Municipality's outstanding Sewer System Revenue and Refunding Bonds issued pursuant to and referred to in Ordinance No. 9434 of the City of Grand Island, Nebraska, any Sewer System Revenue Bonds now outstanding and any additional Sewer System revenue bonds hereafter issued on parity with such outstanding revenue bonds. These revenues shall be set aside as collected and deposited in a separate fund with at least two separate accounts, one for the operation and maintenance costs and the other for principal and interest payments on the Loan. The Municipality shall deposit monthly, in the Loan payment account, an amount equal to at least one-sixth of the anticipated amount due on the next Loan payment date. The Municipality agrees to develop the User Charge System based on actual or estimated use of wastewater treatment services, providing that each user or user class pay its proportionate share of operation and maintenance (including replacement) costs within the Municipality's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes and to conduct at least a biennial review of user charge rates to review the adequacy of the user charge rates. The Municipality agrees the initial financial analysis performed by NDEQ in Attachment C is a reasonable estimate of the Project Costs, of the financial situation of the Municipality in relation to this Project, and of the user charges necessary at the time of initiation of operation of the Project. The NDEQ may review this information annually to insure the Municipality's compliance with the Loan conditions and update Attachment C to reflect any changes.

(b) Performance Under Loan Contract. The Municipality covenants and agrees:

(1) to comply with all applicable State and Federal laws, rules and regulations (including, but not limited to the Federal crosscutting issues listed in Appendix F of the EPA's Initial Guidance for State Revolving Funds and set forth on Attachment D hereto and NDEQ Regulations), in the performance of this Loan Contract; and

(2) to cooperate with NDEQ in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and NDEQ under this Loan Contract.

(c) Completion of Project and Provision of Moneys Therefore. The Municipality covenants and agrees:

(1) to exercise its best efforts in accordance with prudent wastewater treatment utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in Article II hereto; and

(2) to provide from its own financial resources all moneys, in excess of the total amount of proceeds it receives under the Loan, required to complete the Project.

(d) Delivery of Documents. Concurrently with the delivery of this Loan Contract (as previously authorized and executed) at the Loan Closing, the Municipality will cause to be delivered to NDEQ each of the following items:

(1) Counterparts of this Loan Contract (as previously executed by parties hereto);

(2) copies of the ordinances and/or resolutions of the governing body of the Municipality authorizing the execution and delivery of this Loan Contract certified by an Authorized Representative;

(3) an Opinion of Municipality's Counsel substantially in the form of Attachment E hereto;

(4) an executed Note (or other evidence of indebtedness) evidencing the Municipality's obligations under this Loan Contract in the form of Attachment F; and

(5) such other certificates, documents, opinions and information as NDEQ may require.

(e) Operation and Maintenance of Wastewater Treatment System and Sanitary Sewer Collection System. The Municipality covenants and agrees that it shall, in accordance with prudent and Sanitary Sewer Collection System wastewater treatment utility practice:

(1) at all times operate the properties of its Wastewater Treatment Works and Sanitary Sewer Collection System in an efficient manner; and

(2) maintain its Wastewater Treatment Works and Sanitary Sewer Collection System, making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements necessary to maintain its system in good repair, working order and operating condition.

(f) Disposition of Wastewater Treatment Works and Sanitary Sewer Collection System. The Municipality covenants that it intends to own and operate the Project at all times during the term of the Loan. The Municipality does not know of any reason why the Project will not be so used in the absence of (i) supervening circumstances not anticipated by the Municipality at the time of the Loan, (ii) adverse circumstances beyond the control of the Municipality or (iii) obsolescence of such insubstantial parts or portions of the Project as may occur as a result of normal use thereof.

The Municipality shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Wastewater Treatment Works and Sanitary Sewer Collection System except on ninety (90) days' prior written notice to NDEQ and, in any event, shall not sell, lease, abandon or otherwise dispose of the same unless the Municipality shall in accordance with Section 4.02 hereof assign this Loan Contract and its rights and interests hereunder to the purchaser or lessee of the Wastewater Treatment Works and Sanitary Sewer Collection System and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Municipality under this Loan Contract. In no event shall the Municipality sell, lease, abandon or otherwise dispose of the Wastewater Treatment Works and Sanitary Sewer Collection System to any person or entity other than a municipal corporation or other political subdivision of the State of Nebraska or any combination thereof, that has legal responsibility to treat wastewater.

Before any proposed disposition of the Wastewater Treatment Works and Sanitary Sewer Collection System can be made, the Municipality shall provide NDEQ with an opinion of a nationally recognized bond counsel that such proposed disposition is permitted by the provisions of this subparagraph, and further, that such

disposition shall not endanger the exclusion from gross income for federal income tax purposes of the interest on any bonds issued to fund deposits into the Fund, nor shall it relieve the Municipality of its duties, covenants, obligations and agreements under this Loan Contract.

(g) Records and Accounts.

(i) The Municipality shall keep accurate records and accounts for its Wastewater Treatment System (the "System Records"), which shall be separate and distinct from its other records and accounts (the "General Accounts"). The System Records and General Accounts shall be made available for inspection upon request by NDEQ at any reasonable time. The Municipality shall, upon written request by NDEQ during the term of the Loan, perform and provide NDEQ a written audit of its System Records and/or General Accounts, provided such audit shall not be due to NDEQ sooner than 210 days following the close of the fiscal year, or years, identified in the request for audit. In the event that during the period in which the Project financed by this agreement is under construction, and the Municipality expends, for any purpose, total federal funds in excess of \$500,000 during the Municipality's fiscal year, then the Municipality shall, irrespective of any request from NDEQ, provide NDEQ a copy of the single agency audit made on the Municipality's General Accounts performed by an independent registered municipal accountant required in such cases by the Federal Single Audit Act Amendments of 1996, OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. In the sole discretion of NDEQ, any requirement herein to perform and/or provide an audit at the request of NDEQ may be waived by NDEQ on the basis of the Municipality's receipt of an audit waiver received from some other government agency and accurately acknowledging the Municipality's obligation to NDEQ under this Loan or for any other reason acceptable to NDEQ.

(ii) The Municipality shall maintain its accounts in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any other more current edition thereafter, issued by the Government Finance Officers Association. The Municipality's Basic Financial Statements shall comply with the government-wide perspective model and, where applicable, the Statement of Infrastructure Assets proscribed by Government Accounting Standards Board Statement 34.

(h) Inspections; Information. The Municipality shall permit the EPA, NDEQ and any party designated by NDEQ to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the EPA and NDEQ may reasonably require in connection therewith.

(i) Insurance. The Municipality will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Wastewater Treatment Works and Sanitary Sewer Collection System as would be carried by similar sized municipal operators of Wastewater Treatment Works and Sanitary Sewer Collection System, insofar as the properties are of an insurable nature. The Municipality also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Nebraska Political Subdivisions Tort Claims Act, Neb.Rev.Stat. §§13-901 to 13-926, or other similar future law.

(j) Continuing Representations. The representations of the Municipality contained herein shall be true at the time of the execution of this Loan Contract and at all times during the term of this Loan Contract.

(k) Notice of Material Adverse Change. The Municipality shall promptly notify NDEQ of any material adverse change in the activities, prospects or condition (financial or otherwise) of the Municipality's Wastewater Treatment Works and Sanitary Sewer Collection System, or in the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Contract.

(l) Additional Covenants and Requirements. If necessary in connection with the making of the Loan, additional covenants and requirements have been included. The Municipality agrees to observe and comply with each such additional covenant and requirement, if any.

ARTICLE IV

ASSIGNMENT

Section 4.01. Assignment and Transfer by NDEQ. The Municipality hereby approves and consents to any assignment or transfer of this Loan Contract that NDEQ deems necessary in connection with the operation and administration of the Fund. The Municipality hereby specifically approves the assignment and pledging of the interest portion of the Loan Repayments to NIFA.

Section 4.02. Assignment by the Municipality. This Loan Contract may not be assigned by the Municipality for any reason, unless the following conditions shall be satisfied:

(a) NDEQ shall have approved said assignment in writing;

(b) the assignee is a village, town, city, district, association, county or other public body created by or pursuant to State law of the State of Nebraska or any combination thereof, that has legal responsibility to treat wastewater;

(c) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, and obligations under this Loan Contract; provided, however, such assignment shall not relieve the Municipality of its duties, covenants, and obligations under this Loan Contract;

(d) the assignment will not adversely impact NDEQ's ability to meet its duties, covenants and obligations under the Pledge Agreement nor may the assignment endanger the exclusion from gross income for federal tax purposes of the interest on any bonds issued by NIFA to fund deposits into the Fund; and

(e) the Municipality shall provide NDEQ with an opinion of a nationally recognized bond counsel that each of the conditions set forth in subparagraphs (b), (c), and (d) hereof have been met.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default and Remedies.

(a) Violation or noncompliance of any of the provisions of this Loan by the Municipality or failure of the Municipality to complete and maintain the Project in the manner proposed by the Municipality and approved by the NDEQ may result in a cancellation of this Loan and a demand that any outstanding balance of principal and interest be paid immediately.

(b) In the event that the Municipality makes a late payment pursuant to the Loan repayment schedule in Attachment A, the NDEQ may assess a penalty. Late payments will subject the Municipality to a 5 percent administrative penalty on the delinquent amount. Penalty interest shall accrue at the rate of 1 percent per month of the amount of the late payment from and after the due date until it is paid.

(c) If the Municipality fails to make any payment of principal and interest, late fee, and penalty interest imposed pursuant to this Loan within sixty days of the due dates specified in Section 2.05, the payment shall be deducted from the amount of aid to municipalities to which the Municipality is entitled

under Neb. Rev. Stat. §§77-27,136 to 77-27,137.01. Such amount shall be paid directly to the Wastewater Treatment Facilities Construction Loan Fund.

Section 5.02. Notice of Default. Before any action is taken under this Article, the NDEQ shall give thirty days written notice of the NDEQ's intent to the Municipality. The Municipality shall have the thirty day time period to comply with the violated contractual term. If compliance is achieved the Loan shall revert to good standing.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Hold Harmless Agreement. The State of Nebraska and the NDEQ, and the officers, agents, and employees of each, shall have no responsibility or liability for the construction, operation and maintenance of the Project.

Section 6.02. Waivers. Any waiver at any time of rights or duties under this Loan Contract shall not be deemed to be a waiver of any subsequent right or duty under this Loan Contract.

Section 6.03. Amendments, Supplements and Modifications. This Loan Contract may not be amended, supplemented or modified without the prior written consent of NIFA; provided, however, the consent of NIFA is not required to revise Attachment B and Attachment C hereto. An executed copy of any amendment to this Loan Contract including revision of Attachments shall be immediately provided to NIFA.

Section 6.04. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Municipality, NDEQ, and NIFA at the following addresses:

(a) MUNICIPALITY

City of Grand Island
100 East First Street
PO Box 1968
Grand Island, NE 68802-1968

(b) NDEQ:

Department of Environmental Quality
Suite 400
1200 "N" Street, The Atrium
P.O. Box 98922
Lincoln, NE 68509-8922

(c) NIFA:

Nebraska Investment Finance Authority
200 Commerce Court
1230 "O" Street
Lincoln, NE 68508

All notices given by registered or certified mail as aforesaid shall be deemed duly given as of the date they are so mailed. Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 6.05. Severability. In the event any provision of this Loan Contract shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 6.06. Binding Effect. This Loan Contract shall inure to the benefit of and shall be binding upon NDEQ and the Municipality and their respective successors and assigns.

Section 6.07. Execution in Counterparts. This Loan Contract may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 6.08. Governing Law and Regulations. This Loan Contract shall be governed by and construed in accordance with the laws of the State of Nebraska, including the Act and the Regulations which Regulations are, by this reference thereto, incorporated herein as a part of this Loan Contract.

Section 6.09. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Contract, such consent or approval may only be given by NDEQ.

Section 6.10. Further Assurances. The Municipality shall, at the request of NDEQ, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Contract.

IN WITNESS THEREOF, the parties hereto have caused this Loan Contract to be executed and delivered as of the date set forth below.

CITY OF GRAND ISLAND, NEBRASKA

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By _____

By _____

Title Mayor _____

Title Director _____

Date _____

Date _____

By _____

Title Treasurer _____

Date _____

INDEX OF ATTACHMENTS

Attachment A - Projected Loan Repayment Schedule

Attachment B - Project Costs and Projected Outlay Schedule

Attachment C - Financial Analysis

Attachment D - List of Federal Laws and Authorities

Attachment E - Municipality's Counsel's Opinion

Attachment F - Promissory Note

Attachment G - Certificate

Attachment H – Other Documents

ATTACHMENT A

PROJECTED LOAN REPAYMENT SCHEDULE

Interest accruing before _____, 20____, which is not reflected on the following amortization schedule shall be billed and paid in accordance with NDEQ's procedures as in effect from time to time. Interest shall accrue at the applicable rate (set forth in Section 2.03 of the Contract for Loan) as to the amount drawn and outstanding from time to time during the payment period, with payments due on June 15 and December 15 of each year, commencing December 15, 20____. Amounts due will be billed on or about May 15 and November 15 of each year for each six-month payment period ending on the set interest payment date. Interest accruing on any principal amounts drawn after the billing date are to be paid as an addition to the billing for the next interest payment period.

DRAFT

ATTACHMENT B

PROJECT COSTS

Construction Cost
A/E Design Fees
Inspection Fees
Surveying Fees
Contingencies
TOTAL ESTIMATED PROJECT COST \$

SOURCE OF FUNDS

NDEQ CWSRF Loan \$

OUTLAY SCHEDULE

July 20__
August
September
October
November
March 20__
April
May
June
July
August
September
October
November
March 20__
April
May
June
July
August
September
October
November
December
TOTAL \$

ATTACHMENT C

FINANCIAL CAPABILITY ANALYSIS

GRAND ISLAND, NEBRASKA

CWSRF Project No. _____

Grand Island has requested CWSRF loan assistance of \$37,000,000 to finance sanitary sewer improvement projects. In order to meet coverage requirements on Grand Island's existing sewer revenue bond separate smaller CWSRF loans will be made [insert description of amounts and dates of loans made and expected to be made pursuant to overall authorization].

A financial analysis is presented. The documents reviewed and used to complete this analysis are:

1. Audit reports for the City of Grand Island, for the years ending September 30, 2010, 2011, 2012 and 2013.
2. Application for State and/or Federal Assistance, January 23, 2014
3. Sewer Revenue Bonds, 9/17/2013.
4. Report on Revenue Requirements, Cost of Service and Rates for Wastewater Service, dated October 1, 2013 prepared by Black & Veatch.

Table 1

Grand Island Sewer Fund Financial Summary FY 2010 – FY 2013

Fiscal Year	Operating Income	Operating Expense (1)	Net Revenue	Debt Service	Debt Coverage Ratio
2010	\$9,338,088	\$5,908,172	\$3,429,916	\$1,759,323	1.95
2011	\$8,725,053	\$5,376,869	\$3,348,184	\$1,758,191	1.90
2012	\$8,374,864	\$4,787,445	\$3,587,419	\$1,718,220	2.09
2013	\$8,713,747	\$5,339,743	\$3,374,004	\$3,125,069	1.08

(1) Depreciation & Interest Expense is not included.

In FY 2013 Grand Island paid off Sewer System Revenue and Refunding Bonds dated June 25, 2003. The pay off included a principal balance of \$3,050,000 plus accrued interest of \$75,069. The City of Grand Island issued Sewer System Revenue Bonds dated September 17, 2013, by Ordinance 9434 with original issue amount of \$35,430,000. Interest ranges from 0.50 to 5.375% with final maturity on September 15, 2038. The City funded the headworks project and North Interceptor phase 1 with this revenue bond debt. Construction for the work funded by the September 17, 2013 revenue bond issue is expected to be complete in March, 2015.

User Fee Impacts

The City of Grand Island approved current sewer rates by passing Resolution 2013-331 effective October 1, 2013. A typical small residential customer who uses 500 cubic feet of water per month currently pays a sewer rate \$18.64/month. The City of Grand Island hired Black & Veatch to evaluate the finances of their sewer utility and to prepare a rate study. Black and Veatch prepared a report dated October 1, 2013 and titled "Revenue Requirements, Cost of Service and Rates for Wastewater Service." Table B presents estimated sewer rates that should get implemented effective October 1, 2014, 2015, 2016 & 2017. The revenues from the projected sewer rates are expected to support the operation and maintenance of the sewer utility, service the sewer revenue bond debt in the amount of \$35,430,000 and to service the debt due to the proposed CWSRF debt in the amount of \$37,000,000. The sewer rate for a typical customer who uses 500 cubic feet of water is estimated to be \$25.94/month in fiscal year 2017.

DRAFT

Table B

City of Grand Island, NE Wastewater Utility Proposed Rates

	Charges to be Effective October 1,			
	2013	2014	2015	2016
Sewer Service Charge - \$/month				
All Customers	8.24	8.24	8.24	8.24
Volume Charge - \$/Ccf				
Low Strength Industrial Dischargers	1.47	1.96	2.23	2.47
Non-Sanitary Sewer Flow (a)	1.18	1.18	1.18	1.18
Sanitary Sewer Flow	2.52	3.01	3.28	3.52
Excess Strength Surcharge - \$/lb				
BOD over 250 mg/l	0.3844	0.3844	0.3844	0.3844
Suspended Solids over 250 mg/l	0.2533	0.2533	0.2533	0.2533
Oil & Grease over 100 mg/l	0.0832	0.0845	0.0858	0.0872
Low Strength Industrial Dischargers				
BOD over 0 mg/l	0.3844	0.3844	0.3844	0.3844
Suspended Solids over 0 mg/l	0.2533	0.2533	0.2533	0.2533
Oil & Grease over 0 mg/l	0.0832	0.0845	0.0858	0.0872
TKN over 30 mg/l	0.5701	0.6314	0.6927	0.7539
Nitrates over 25 mg/l	1.8739	1.8810	1.8881	1.8953

(a) Applicable to flow discharged from JBS' pretreatment lagoons through their sewer main connecting directly to the City's wastewater treatment plant.

Ccf = Hundred Cubic Feet

BOD = Biochemical Oxygen Demand

TKN = Total Kjeldahl Nitrogen

mg/l = milligram per liter

Table 2 represents the estimated revenue and debt service of the Grand Island Sewer Utility in FY 2014, 2015, 2016 & 2017. This information is obtained from the Black & Veatch study for Coverage Requirements.

Table 2

Estimate of Net Revenue & Annual Debt Service FY 2014 - FY 2017

Fiscal Year Starting October 1	Ensuing Year Projected Net Revenue	Average Annual Debt Service	Debt Coverage Ratio
2014	\$3,742,700	\$3,014,400	1.30
2015	\$4,522,500	\$3,485,300	1.30
2016	\$5,277,500	\$3,981,600	1.33
2017	\$5,460,100	\$4,201,400	1.30

Funds Available for State Intercept

State Aid to Cities	\$0
Highway Allocations, FY 2013	\$3,791,667
TOTAL	\$3,791,667
Proposed CWSRF Loan #C317867 P&I	\$434,188

State intercept total is more than the annual CWSRF principal and interest loan payments.

Recommendation: The City of Grand Island's sewer rate is 0.7% of the median household income. Since the City of Grand Island's sewer rate is less than the 2% guideline from EPA, the City is eligible to receive the CWSRF loan. We recommend that the Department award a CWSRF Loan to the City of Grand Island.

ATTACHMENT D LIST OF FEDERAL LAWS AND AUTHORITIES

ENVIRONMENTAL:

- Archeological and Historic Preservation Act of 1974, Pub. L. 93-291
- Clean Air Act, 42 U.S.C. 7506(c)
- Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.
- Coastal Zone Management Act of 1972, Pub. L. 92-583, as amended
- Endangered Species Act, 16 U.S.C. 1531 et seq.
- Executive Order 11593, Protection and Enhancement of Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Farmland Protection Policy Act, 7 U.S.C. 4201 et seq
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, Pub. L. 89-665, as amended
- Safe Drinking Water Act, Pub. L. 92-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

ECONOMIC :

- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

SOCIAL LEGISLATION:

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 13 of Pub. L. 92-500, Prohibition against sex discrimination under the Federal Water Pollution Control Act
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625 and 12138
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, (including Executive Orders 11914 and 11250)

MISCELLANEOUS AUTHORITY

- Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646
- Executive Order 12549 - Debarment and Suspension
- Nebraska Clean Water State Revolving Loan Fund #CS - 310001

ATTACHMENT E

Form of Opinion of Municipality's Counsel

[USE MUNICIPALITY'S OR COUNSEL'S LETTERHEAD]

[Date]

[NOTE: Any of the opinions given below may be given in reliance upon the opinion of another Bond Counsel, and one Bond Counsel may give some of the opinions and another Bond Counsel may give others.]

Nebraska Investment Finance Authority
200 Commerce Court
1230 O Street
Lincoln, NE 68508
Attention: Executive Director

Nebraska Department of Environmental Quality
Suite 400
1200 N Street, The Atrium
Post Office Box 98922
Lincoln, NE 68509-8922
Attention: Water Quality Division

Trustee:

Ladies and Gentlemen:

[I/We] have acted as [Bond] Counsel in connection with the execution and delivery by [NAME OF MUNICIPALITY], a [TYPE OF ENTITY] (the "Municipality"), of a Contract for Loan No. C317867 (the "Loan Contract") between the Municipality and the Nebraska Department of Environmental Quality ("NDEQ") and the issuance of a promissory note (the "Note") by the Municipality to NDEQ. All terms used in this opinion letter and not defined shall have the meanings given to them in the Loan Contract.

In this connection, [I/we] have examined the following:

- (a) Certified copies of the [DESCRIBE RESOLUTION AND/OR ORDINANCE PURSUANT TO WHICH LOAN AGREEMENT AND NOTE ARE TO BE ENTERED INTO];
- (b) An executed counterpart of the Loan Contract;
- (c) The executed Note; and
- (d) Such other documents as [I/we] deemed relevant and necessary in rendering this opinion.

As to questions of fact material to [my/our] opinion, [I/we] have relied upon the certified proceedings and other certifications of public officials furnished to [me/us] without undertaking to verify the same by independent investigation.

Based upon the foregoing [I am/we are] of the opinion that:

1. The Municipality is a **[CITY, VILLAGE, SID OR OTHER]** duly organized and validly existing under the laws of the State of Nebraska.

2. The Municipality is a governmental unit, as such term is used in Section 141(b)(6) of the Internal Revenue Code of 1986, as amended.

3. The Municipality has the power and authority to enter into the Loan Contract, to issue the Note, to borrow the entire principal amount provided for in Section 2.01 of the Loan Contract (the "Principal Amount") and to perform its obligations under the Loan Contract and the Note.

4. The Loan Contract and the Note have been duly authorized, executed and delivered by the Municipality and are, and would be if the entire Principal Amount were advanced to the Municipality pursuant to the Loan Contract on the date of this opinion, valid and legally binding special obligations of the Municipality, payable solely from the sources provided therefor in the Loan Contract, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

5. Pursuant to §18-1803 through 18-1805 the Loan Contract creates a valid lien on the funds pledged by the Municipality pursuant to Section 3.02 of the Loan Contract for the security of the Loan Contract and the Note and no other debt of the Municipality is secured by a superior lien on such funds.

6. The Municipality has obtained or made all approvals, authorizations, consents or other actions of, and filings, registrations or qualifications with, the Municipality or any other government authority which are legally required to allow the Municipality to enter into and perform its obligations under the Loan Contract and the Note and borrow the full Principal Amount pursuant to the Loan Contract and the Note.

Very truly yours,

ATTACHMENT F

PROMISSORY NOTE OF THE CITY OF GRAND ISLAND, NEBRASKA

FOR VALUE RECEIVED, the undersigned (the "Municipality") promises to pay, but solely from the sources described herein, to the order of the Nebraska Department of Environmental Quality ("NDEQ"), or its successors and assigns, the principal sum of not to exceed \$_____ to the extent disbursed pursuant to Section 2.01 and Section 2.04 of the Loan Contract No. _____ ("the Loan Contract"), with interest on each such amount until paid, as provided in Section 2.01 and 2.03 of the Loan Contract between NDEQ and the Municipality. In addition, the Municipality shall pay an Administrative Fee on the outstanding principal amount of this Note at the rate of 1.0 percent per annum as provided in the Loan Contract. The said principal and interest and Administrative Fee shall be payable in semiannual installments each payable on December 15 and June 15 of each year in accordance with Section 2.05 of the Loan Contract. Each installment shall be in the amount set forth opposite its due date in Attachment A to the Loan Contract.

All payments under this Note shall be payable at the offices of NDEQ in Lincoln, Nebraska, and upon the assignment of this Note to NIFA, at the principal corporate trust office of a Trustee designated by NIFA, or such other place as NDEQ may designate in writing.

This Note is issued pursuant to and is secured by the Loan Contract and Ordinance No. _____ of the City of Grand Island, Nebraska, the terms and provisions of which are incorporated herein by reference.

All payments of principal of and interest on this Note and other payment obligations of the Municipality hereunder shall be limited obligations of the Municipality payable solely out of the Wastewater User Charge (as defined in the Loan Contract), on a parity with revenue bonds, presently outstanding or hereafter issued pursuant to Ordinances No. 9434 of the Municipality and pursuant to the Ordinance and shall not be payable out of any other revenues of the Municipality. The obligations of the Municipality under this Note shall never constitute or give rise to a charge against its general credit or taxing power. This note shall not be a debt of the municipality within the meaning of any constitutional statutory or charter limitation upon the creation of general obligation indebtedness of the Municipality.

If default be made in the payment of any installment due under this Note or by the occurrence of any one or more of the Events of Default specified in Article V of the Loan Contract and if such Event of Default is not remedied as therein provided, or by failure to comply with any provision of the Ordinance, NDEQ then, or at any time thereafter, may give notice to the Municipality that all unpaid amounts of this Note then outstanding, together with all other unpaid amounts outstanding under the Loan Contract, are due and payable immediately, and thereupon, without further notice or demand, all such amounts shall become and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time in the event of any continuing or subsequent default.

The Municipality hereby waives presentment for payment, demand, protest, notice of protest and notice of dishonor.

This Note and all instruments securing the same are to be construed according to the laws of the State of Nebraska. Signed and sealed this ____ day of _____, 20__.

[SEAL]

CITY OF GRAND ISLAND, NEBRASKA

Attest:

By _____

Title Clerk

Title Mayor

Complete this section upon assignment of this Note to NIFA.

Pursuant to the Pledge Agreement dated as of _____ as amended (the "Pledge Agreement"), by and between NDEQ and the Nebraska Investment Finance Authority ("NIFA"), and the Master Trust Indenture dated as of _____, as supplemented and amended, by and between NIFA _____, as trustee, NDEQ hereby assigns, grants and conveys any and all of NDEQ's rights, title and interest in this Note to NIFA, except as provided in the Pledge Agreement, and NIFA hereby assigns such rights, title and interest to the Trustee and any successor Trustee.

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By _____

Title Director

Date _____

NEBRASKA INVESTMENT FINANCE AUTHORITY

Attest:

By _____

Title _____

Date _____

ATTACHMENT G

**CERTIFICATE OF THE
CITY OF GRAND ISLAND, NEBRASKA**

The following certifications are made in connection with the Contract for Loan No. C317867 (the "Loan Contract") between the Nebraska Department of Environmental Quality ("NDEQ") and the City of Grand Island, Nebraska (the "Municipality") for the purpose of establishing compliance by the Municipality with requirements for the maintenance of the tax exemption of interest on any bonds (the "Bonds") which may be from time to time issued by the Nebraska Investment Finance Authority ("NIFA") to provide funds for deposit in the Loan Fund (as defined in the Loan Contract).

WHEREFORE, the undersigned hereby certifies on behalf of the Municipality to NDEQ, NIFA and any trustee for the Bonds, as follows:

1. The undersigned is authorized to make the following certifications on behalf of the Municipality.
2. The Municipality represents that it reasonably expects that the design and construction of the Project, as defined in the Loan Contract, will commence within six months from the execution of the Loan Contract and that the design and construction of the Project will proceed with due diligence thereafter to completion.
3. The proceeds of the loan pursuant to the Loan Contract will be used to construct a facility that will be owned and operated by the Municipality. There will be no contracts for the use of the facility other than contracts on a rate scale basis. Specifically, the Municipality represents that there will be no contracts for use of the Project that will require a non-governmental unit to make payments to the Municipality without regard to actual use of the Project.

Dated this ____ day of _____, 20__.

CITY OF GRAND ISLAND, NEBRASKA

Title: Mayor

+

**ATTACHMENT H
OTHER DOCUMENTS**

DRAFT

ORDINANCE NO. 9493

AN ORDINANCE OF THE CITY OF GRAND ISLAND, NEBRASKA, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$40,000,000 TOTAL PRINCIPAL AMOUNT SEWER SYSTEM REVENUE BONDS IN THE FORM OF ONE OR MORE PROMISSORY NOTES OF THE CITY, TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING, IMPROVING, EXTENDING, EQUIPPING AND FURNISHING IMPROVEMENTS TO THE CITY'S SANITARY SEWER DISPOSAL PLANT AND SEWER SYSTEM; APPROVING THE EXECUTION AND DELIVERY OF ONE OR MORE LOAN CONTRACTS WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the Mayor and Council of the City of Grand Island, Nebraska, as follows:

Section 1. The Mayor and City Council of the City of Grand Island, Nebraska (the "City") hereby find and determine:

(a) The City owns and operates a wastewater treatment plant and sanitary sewer system (such plant and system, together with all additions and improvements thereto hereafter acquired and constructed are herein referred to as the "Sewer System") which represents a revenue-producing undertaking of the City;

(b) the Nebraska Department of Environmental Quality ("NDEQ") has approved construction of additions and improvements to the City's Sewer System (collectively, the "Project") and has proposed to lend monies for the Project in one or more loans (each, an "NDEQ Loan"). Each NDEQ Loan shall be governed as to terms and conditions by a Loan Contract between the City and NDEQ, each of which shall be in substantially the form presented herewith (each, an "NDEQ Contract"). To evidence each NDEQ Loan and the debt obligation incurred by the City in connection with each NDEQ Contract, NDEQ has agreed to accept a bond payable from the revenues of the Sewer System to be evidenced by and in the form of a promissory note (each, an "NDEQ Note" and together the "NDEQ Notes"; sometimes all of the NDEQ Notes issued hereunder are collectively referred to herein as the "Bonds") in substantially the form attached to the NDEQ Contract.

(b) The City has issued and outstanding the following revenue bonds which are a lien upon and secured by a pledge of the Revenues of the Sewer System:

Sewer System Revenue and Refunding Bonds, Series 2013, Date of Original Issue – September 17, 2013, issued pursuant to Ordinance No. 9434 of the City, of which \$36,915,000 in principal amount are presently outstanding (the "Outstanding Parity Bonds");

(c) That it is necessary and advisable for the City to construct additions and improvements to the Sewer System for which the estimated total cost is not less than \$40,000,000.

Approved as to Form	□ _____
July 25, 2014	□ City Attorney

ORDINANCE NO. 9493 (Cont.)

(d) The Outstanding Parity Bonds represent the only indebtedness of the City for which the Revenues of the Sewer System have been pledged.

(e) Section 7 of the Ordinance authorizing the issuance of the Outstanding Parity Bonds (the "Outstanding Parity Bonds Ordinance") permits the issuance of Additional Bonds which are payable on a parity with the Outstanding Parity Bonds and equally and ratably secured therewith under the terms of the Outstanding Parity Bonds Ordinance; provided that the City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the "Net Revenues" of the Sewer System (as defined in the Outstanding Parity Bonds Ordinance) in each of the three full fiscal years after the issuance of such series of Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the Outstanding Parity Bonds, as then outstanding, and of each series of Additional Bonds as then proposed to be issued, which projections shall be made in such manner as more fully described in the Outstanding Parity Bonds Ordinance (the "Projections").

(f) To satisfy the funding requirements described in this Section 1, it is necessary for the City to issue its Sewer System Revenue Bonds, in one or more series and in the form of one or more NDEQ Note, in the aggregate total principal amount of not to exceed \$40,000,000 pursuant to Sections 18-1803 to 18-1805 R.R.S. Neb. 2012, each of which series shall be an NDEQ Loan. In connection with each NDEQ Loan, it is necessary and advisable for the City to approve the execution and delivery of the form of NDEQ Contract and NDEQ Note. Upon acceptance and approval of the Projections as provided herein for each series of bonds authorized herein, all conditions, acts and things required by law to exist or to be done precedent to the issuance of the City's Sewer System Revenue Bonds in the principal amount of not to exceed \$40,000,000 in one or more series, will exist and been done and performed in regular and due time and form as required by law. Said bonds will be payable from the Revenues of the Sewer System.

Section 2. In addition to the definitions provided in parentheses elsewhere in this Ordinance, the following definitions of terms shall apply, unless the context shall clearly indicate otherwise:

(a) the term "Revenues" shall mean all of the rates, rentals, fees and charges, earnings and other monies, including investment income, from any source derived by the City of Grand Island, Nebraska, through its ownership and operation of the Sewer System.

(b) the term "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance which are equal in lien to the Bonds and the Outstanding Parity Bonds, including all such bonds issued pursuant to Section 7 and refunding bonds issued pursuant to Section 8.

(c) the term "Average Annual Debt Service Requirements" shall mean that number computed by adding all of the principal and interest due when computed to the absolute maturity of the bonds for which such computation is required and dividing by the number of years remaining that the longest bond of any issue for which such computation is required has to run to maturity. In making such computation, the

ORDINANCE NO. 9493 (Cont.)

principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.

(d) the term "Deposit Securities" shall mean obligations of the United States of America, direct or unconditionally guaranteed, including any such obligations issued in book entry form.

(e) the term "Net Revenues" shall mean the Revenues derived by the City from the ownership or operation of the Sewer System, including investment income, but not including any income from the sale or other disposition of any property belonging to or forming a part of the Sewer System, less the ordinary expenses for operating and maintaining the Sewer System payable from the Operation and Maintenance Account described in Section 5 of this Ordinance. Operation and Maintenance expenses for purposes of determining "Net Revenues" shall not include depreciation, amortization of financing expenses or interest on any bonds or other indebtedness. Net Revenues for all purposes of this Ordinance shall be shown by an audit for the fiscal year in question as conducted by an independent certified public accountant or firm of such accountants.

(f) the term "Outstanding Parity Bonds" shall have the meaning set forth in Section 1 hereof.

(g) the term "Paying Agent and Registrar" shall mean the Treasurer of the City, as appointed to act as paying agent and registrar for the Bonds pursuant to Section 4 hereof, or any successor thereto.

Section 3. To provide for the payment of the costs of the Project, there is hereby approved the issuance of the Bonds, in one or more series, each of which shall be in the form of and evidenced by a single NDEQ Note, and which Bonds in the aggregate may be issued in an amount not to exceed Forty Million Dollars (\$40,000,000). In connection with the issuance of each NDEQ Note, the City shall enter into an NDEQ Contract. The final terms of each NDEQ Note and NDEQ Contract shall be approved by resolution of the City Council prior to execution and delivery thereof, with such changes as shall be determined necessary and appropriate by the Mayor or the City Treasurer (each, an "Authorized Officer", and together, the "Authorized Officers") for and on behalf of the City. Prior to the issuance of each NDEQ Note and entering into each NDEQ Contract, the City shall have received and approved the Projections made in connection with the delivery of each NDEQ Note. The terms of each NDEQ Note and each NDEQ Loan Contract in substantially the form attached hereto, are hereby approved and the Authorized Officers are each hereby authorized to execute and deliver the NDEQ Note and the NDEQ Loan Contract with such changes from the forms presented and attached hereto as such officer shall deem appropriate for and on behalf of the City in connection with each NDEQ Loan, provided, however, each NDEQ Note shall provide for interest to be paid at an interest rate of not to exceed 2.50% per annum and with an administrative fee payable to NDEQ of not to exceed 1% per annum. The Mayor and City

ORDINANCE NO. 9493 (Cont.)

Treasurer and any other officer or officers of the City are hereby further authorized to take such further actions and to execute such certificates and other documents as shall be deemed necessary or appropriate by any of them in connection with the issuance and delivery of each NDEQ Note and the NDEQ Loan Contract.

Section 4. The City Treasurer shall maintain a record of information with respect to the Bonds in accordance with the requirements of Section 10-140, R.R.S. Neb. 2012, as amended, and shall cause the same to be filed in the Office of the Auditor of Public Accounts of the State of Nebraska. The City Treasurer is hereby appointed to serve as paying agent and registrar for the Bonds.

Section 5. The Revenues of the Sewer System are hereby pledged and hypothecated for the payment of the Outstanding Parity Bonds, the Bonds and any Additional Bonds as authorized by this Ordinance and interest on such Outstanding Parity Bonds, Bonds and Additional Bonds and the City does hereby agree with the holders of the Outstanding Parity Bonds, the Bonds and Additional Bonds as follows:

(a) **GRAND ISLAND SEWER SYSTEM FUND** - The entire gross Revenues derived from the operation of the Sewer System shall be set aside as collected and deposited in a separate fund which has been previously created and designated as the "Grand Island Sewer System Fund." For purposes of allocating the monies in the Grand Island Sewer System Fund, the City shall maintain the following accounts: (1) Operation and Maintenance Account; (2) Bond Payment Account; (3) Debt Service Reserve Account; and (4) Surplus Account.

(b) **OPERATION AND MAINTENANCE ACCOUNT** - Out of the Grand Island Sewer System Fund there shall be monthly credited into the Operation and Maintenance Account such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Sewer System, and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.

(c) **BOND PAYMENT ACCOUNT** - Out of the Grand Island Sewer System Fund there shall be credited monthly on or before the fifteenth day of each month to the Bond Payment Account the following amounts:

- (1) After taking into consideration any amount on deposit in the Bond Payment Account for payment of the next installment amount (principal and interest) on the Bonds, an amount equal to such next installment amount divided by the number of monthly periods which will elapse before such installment amount is due;

ORDINANCE NO. 9493 (Cont.)

- (2) During such periods and in such amounts, all payments as are required under the terms of the Outstanding Parity Bonds Ordinance with respect to the principal and interest on the Outstanding Parity Bonds;

The City Treasurer is hereby authorized and directed, without further authorization, to withdraw monies credited to the Bond Payment Account, or if the monies in such Account are insufficient, then from the Debt Service Reserve Account for the Bonds and next from the Surplus Account, in an amount sufficient to pay, when due, the principal of and interest on the Bonds, the Outstanding Parity Bonds or any Additional Bonds and to transfer such amounts due to the Paying Agent and Registrar (or other paying agent for the Outstanding Parity Bonds or any Additional Bonds, as applicable) at least five (5) business days before each principal and interest payment date. Upon the issuance of any Additional Bonds pursuant to this Ordinance appropriate additional credits to the Bond Payment Account shall be provided for sufficient to pay principal and interest on said Additional Bonds.

(d) **DEBT SERVICE RESERVE ACCOUNT** - The City agrees that it shall deposit the amount of \$-0- as the amount required to be maintained attributable to the Bonds in a separate sub-account which is hereby established for the Bonds in the Debt Service Reserve Account. Monies credited to the Debt Service Reserve Account may be withdrawn, but only from the designated sub-account for a specific issue, as needed, to provide funds to pay, when due, the principal of and interest on the Bonds and any Additional Bonds issued pursuant to this Ordinance, as the case may be, if the Bond Payment Account contains insufficient funds for that purpose, and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the Debt Service Reserve Account, there shall be credited to the Debt Service Reserve Account in the month following such withdrawal all monies in the Grand Island Sewer System Fund remaining after making the payments required to be made in such month to the Operation and Maintenance Account and Bond Payment Account and each month thereafter all such remaining monies shall be credited to the Debt Service Reserve Account until such account has been restored to the required balance. Upon the issuance of any Additional Bonds, the amount required to be accumulated and maintained in the Debt Service Reserve Account, in a separate sub-account for such Additional Bonds, shall be set at an amount determined appropriate by the Mayor and Council in connection with any such issue of Additional Bonds (which may be \$-0-). Any such required increase shall be provided for either by credit made from bond proceeds or current funds of the Sewer System then available or by equal monthly credits from the Grand Island Sewer System Fund made in such amounts so that the required amount shall be accumulated in a period of not more than five years. Each sub-account in the Debt Service Reserve Account shall be held solely for the specific issue for which it is established. In the event of withdrawal from any such sub-account which results in the amount in such sub-account being deficient to meet the required balance, available amounts for restoring sub-account balances shall be credited to each deficient sub-account on a pro rata basis in accordance with the respective outstanding principal amounts for those issues for which the respective sub-accounts are then deficient. When the Outstanding Parity Bonds, the Bonds or any issue of Additional Bonds for which a sub-account has been established is no longer outstanding, the particular sub-account for such issue shall no longer be required to be maintained. Anything in this subsection to the contrary notwithstanding, the amount required to be maintained in the Debt Service Reserve Account with respect to the Bonds or any issue of Additional Bonds shall not at any time exceed the maximum amount permitted to be invested without yield restriction under Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department.

(e) **SURPLUS ACCOUNT** - Monies from the Grand Island Sewer System Fund remaining after the credits required in the foregoing Subsections 5(b), 5(c) and 5(d) shall be credited to the Surplus Account. Monies in the Surplus Account may be used to make up any deficiencies in the preceding Accounts, to retire any of the Bonds, Outstanding Parity Bonds or any Additional Bonds prior to their maturity, to pay principal of and interest on any junior lien indebtedness incurred with respect to the Sewer System, to provide for replacements or improvements for the Sewer System, to provide for in lieu of tax payments in an amount not to exceed 1% of the gross revenues of the Sewer System in any fiscal year (as and to the extent permitted by law), or to provide for any other purpose related to the Sewer System.

The provisions of this Section shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to a municipal utility enterprise, which books and records shall show credits to and expenditures from the several Accounts required by this Section. Monies credited to the Grand Island Sewer System Fund or any of the Accounts therein as established by this Ordinance shall be deposited or invested separate and apart from other City funds. Except as specified below for the Debt Service Reserve Account, the City shall not be required to establish separate bank or investment accounts for the Accounts described in Subsection 5(b), 5(c), 5(d) and 5(e). Monies credited to the Debt Service Reserve Account (or any sub-account therein) shall, if maintained in a demand or time deposit account, be kept in a separate account and not commingled with other Sewer System funds or accounts. If invested, monies credited to the Debt Service Reserve Account (or any sub-account therein) may be commingled with other Sewer System funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the Debt Service Reserve Account (or any sub-account therein).

Monies in any of said Accounts except the Debt Service Reserve Account may be invested in investments permissible for a city of the first class. Monies in the Debt Service Reserve Account (or any sub-account therein) may be invested in Deposit Securities or bank depository accounts or certificates of deposit which are either fully insured or fully collateralized as provided by law for investments of funds of Cities of the First Class. Monies invested from the Debt Service Reserve Account shall be invested to mature in not more than five years. Investments held for the Debt Service Reserve Account will be valued at cost for purposes of determining compliance with the requirements of this Ordinance as to the amount required to be maintained in the Debt Service Reserve Account or any sub-account therein.

ORDINANCE NO. 9493 (Cont.)

Income from or profit realized from investments for any Account or any sub-account shall be credited to such Account or sub-account until such Account or sub-account contains any amount then required to be therein, and thereafter such income or profit shall be transferred to the Grand Island Sewer System Fund and treated as other revenues from the operation of the Sewer System. The ordinance authorizing any series of Additional Bonds for which a debt service reserve sub-account is to be established may establish different terms for investment related to such sub-account.

The pledge of the Revenues of the Sewer System provided for in this Ordinance for the Bonds and the Outstanding Parity Bonds, subject to the right of the City to issue Additional Bonds as provided in this Ordinance, is intended as a first and prior pledge of, lien on and security interest in such Revenues for the payment of principal and interest of the Bonds and the Outstanding Parity Bonds, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Sewer System, and is intended to be a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805 with respect to its Sewer System.

Section 6. So long as any of the Bonds, the Outstanding Parity Bonds and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates and charges for the service furnished from the Sewer System adequate to produce Revenues sufficient at all times:

(a) To provide funds to pay, when due, the principal of and interest on the Bonds, the Outstanding Parity Bonds and any Additional Bonds issued pursuant to this Ordinance.

(b) To pay all proper and necessary costs of operation and maintenance of the Sewer System and to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Sewer System.

(c) To provide funds sufficient to make the credits into the Accounts and at the times and in the amounts required by Section 5 of this Ordinance.

(d) To maintain Net Revenues in each fiscal year adopted by the City for the Sewer System in an amount not less than 1.10 times the total amount of principal paid or payable (exclusive of any principal redeemed prior to maturity other than principal redeemed in accordance with any schedule of mandatory redemptions) and interest falling due during such fiscal year on the Bonds, the Outstanding Parity Bonds and any Additional Bonds.

ORDINANCE NO. 9493 (Cont.)

Section 7. To provide funds for any purpose related to the Sewer System, the City may issue Additional Bonds, except for Additional Bonds issued for refunding purposes which are governed by Section 8 of this Ordinance, payable from the Revenues having equal priority and on a parity with the Bonds, the Outstanding Parity Bonds and any Additional Bonds then outstanding, only upon compliance with the following conditions:

(a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Bonds then outstanding, the Outstanding Parity Bonds, any Additional Bonds then outstanding and the proposed Additional Bonds and for any monthly credits to the Debt Service Reserve Account as are required under Subsection 11(d).

(b) The City shall have complied with one or the other of the two following requirements:

- (1) The Net Revenues derived by the City from its Sewer System for the fiscal year next preceding the issuance of the Additional Bonds shall have been at least equal to 1.25 times the Average Annual Debt Service Requirements of the Bonds, the Outstanding Parity Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or
- (2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Sewer System in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the Bonds, the Outstanding Parity Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer shall use as a basis the Net Revenues of the Sewer System during the last fiscal year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made, (B) to reflect his estimate of the net increase over or net decrease under the Net Revenues of the Sewer System for the year which the audit was made by reason of: (i) changes of amounts payable under existing contracts for service; (ii) additional general income from sales to customers under existing rate schedules for various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries,

ORDINANCE NO. 9493 (Cont.)

machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility; and (v) such other factors affecting the projections or revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Average Annual Debt Service Requirements, but no Additional Bonds shall be issued requiring any annual debt service payment in excess of the amount so estimated by the consulting engineer.

The City hereby covenants and agrees that so long as any of the Bonds, the Outstanding Parity Bonds and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the Revenues except in accordance with the provisions of this Ordinance, provided, however, the City reserves the right to issue bonds or notes which are junior in lien to the Bonds, the Outstanding Parity Bonds and any such Additional Bonds with the principal and interest on such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 11(e). In the event that Additional Bonds are proposed to be issued at a time when the audited financial statements of the City for its Sewer System for the most recently completed fiscal year are not yet available, compliance with the test based upon Net Revenues as set forth in Section 13(b)(1) may be determined with reference to the Net Revenues for the most recent fiscal year for which financial statements have been issued and unaudited financial statements for the most recently completed fiscal year as certified by the City Treasurer, provided that compliance shall be determined to be shown for each such fiscal year.

Section 8. The City may issue refunding bonds, which shall qualify as Additional Bonds of equal lien to refund any Bonds, Outstanding Parity Bonds or any Additional Bonds then outstanding, provided, that, if any such Bonds, Outstanding Parity Bonds or Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the principal payments due in any calendar year in which those bonds which are to remain outstanding mature, or in any calendar year prior thereto, shall not be increased over the amount of such principal payments due in such calendar years immediately prior to such refunding.

ORDINANCE NO. 9493 (Cont.)

Refunding bonds issued in accordance with this paragraph of this Section 8 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 7(b) of this Ordinance.

The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any Bonds, Outstanding Parity Bonds or Additional Bonds then outstanding, provided, that, if any Bonds, Outstanding Parity Bonds or Additional Bonds then outstanding are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 7(b)(1) of this Ordinance and, if the proceeds of such refunding bonds are not to be applied immediately to the satisfaction of the bonds which are to be refunded, then such refunding bonds must provide by their terms that they shall be junior in lien to all Bonds, Outstanding Parity Bonds and any Additional Bonds outstanding at the time of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In the event that refunding bonds are proposed to be issued at a time when the audited financial statements of the City for its Sewer System for the most recently completed fiscal year are not yet available, compliance with the test based upon Net Revenues as set forth in Section 7(b)(1) may be determined with reference to the Net Revenues for the most recent fiscal year for which financial statements have been issued and unaudited financial statements for the most recently completed fiscal year as certified by the City Treasurer, provided that compliance shall be determined to be shown for each such fiscal year. In computing Average Annual Debt Service Requirements to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest due on such refunding bonds from time of their issuance to the time of application of the proceeds of such refunding bonds to the satisfaction of the bonds which are to be refunded shall be excluded from such computation to the extent that such principal and interest are payable from sources other than the Revenues (such as bond proceeds held in escrow or investment earnings thereon) or from monies in the Surplus Account and all payments of principal and interest due on the bonds which are to be refunded from and after the time of such application shall also be excluded. For purposes of this paragraph of this Section 8, the time of application of the proceeds of the refunding bonds to the

ORDINANCE NO. 9493 (Cont.)

satisfaction of the bonds which are to be refunded shall be the time of deposit with the paying agent for such bonds which are to be refunded pursuant to Section 10-126, R.R.S. Neb. 2012 (or any successor statutory provision thereto) or the time when such bonds which are to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner.

Section 9. So long as any Bonds, Outstanding Parity Bonds or Additional Bonds are outstanding, the City hereby covenants and agrees as follows:

(a) The City will maintain the Sewer System in good condition and will continuously operate the same in a reasonable and efficient manner, and the City will punctually perform all duties with reference to said system required by the Constitution and statutes of the State of Nebraska, but this covenant shall not prevent the City from discontinuing the use and operation of all or any portion of the Sewer System so long as the Revenues derived from the City's ownership of the properties constituting the Sewer System shall be sufficient to fulfill the City's obligations under Section 6 of this Ordinance.

(b) The City will not grant any franchise or right to any person, firm or corporation to own or operate a sewer system in competition with the Sewer System.

(c) The City will maintain insurance on the property constituting the Sewer System (other than such portions of the system as are not normally insured) against risks customarily carried by similar utilities, but including fire and extended coverage insurance in an amount which would enable the City to repair, restore or replace the property damaged to the extent necessary to make the Sewer System operable in an efficient and proper manner to carry out the City's obligations under this Ordinance. The Mayor and Council shall annually examine the amount of insurance carried with respect to the Sewer System and shall evidence approval of such insurance by resolution. The proceeds of any such insurance received by the City shall be used to repair, replace or restore the property damaged or destroyed to the extent necessary to make the Sewer System operable in an efficient and proper manner, and any amount of insurance proceeds not so used shall be credited to the Surplus Account. In the event of any such insured casualty loss, the City may advance funds to make temporary repairs or provide for an advance on costs of the permanent repair, restoration or replacement from the Operation and Maintenance Account and any such advances shall be repaid from insurance proceeds received.

(d) The City will keep proper books, records and accounts separate from all other records and accounts in which complete and correct entries will be made of all transactions relating to the Sewer System. The City will have its operating and financial statements related to the Sewer System audited annually by a certified public accountant or firm of certified public accounts. The City will furnish to the original purchaser of the Bonds and to the original purchaser or purchasers of each series of Additional Bonds issued hereunder, within four months after the end of each fiscal year of the Sewer System, a copy of the financial statements of the Sewer System and the report thereon of the certified public accountants.

ORDINANCE NO. 9493 (Cont.)

(e) The City shall cause each person handling any of the monies in the Grand Island Sewer System Fund to be bonded by an insurance company licensed to do business in Nebraska in an amount or amounts deemed sufficient by the Mayor and Council to cover the amount of money belonging to said system reasonably expected to be in the possession or control of any such person. The amount of such bond or bonds shall be fixed by the Mayor and Council and the costs thereof shall be paid as an operating and maintenance expense from the Operation and Maintenance Account.

Section 10. The City's obligations under this Ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for, shall be fully discharged and satisfied as to the Bonds issued pursuant to this Ordinance and any such bonds shall no longer be deemed outstanding hereunder if such bonds shall have been purchased and cancelled by the City, or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by depositing with the Paying Agent and Registrar, or with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) Deposit Securities in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment; provided, however, that, with respect to any Bond to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as provided by law or made irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company or the Paying Agent and Registrar may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company or Paying Agent and Registrar, in excess of the amount required to pay principal of and interest on the bonds for which such monies were deposited, shall be paid over to the City as and when collected.

Section 11. The terms and provisions of this Ordinance do and shall constitute a contract between the City and the registered owner or owners of the Bonds and no changes, variations or alterations of any kind, except for changes necessary to cure any ambiguity, formal defect or omission, shall be made to this Ordinance without the written consent of the registered owners of two-thirds (2/3rds) in principal amount of the Bonds then outstanding, provided, however, that neither the principal and

ORDINANCE NO. 9493 (Cont.)

interest to be paid upon any Bond nor the maturity date of any Bond shall be changed without the written consent of the registered owners of all such bonds then outstanding. Any registered owner of a Bond may by mandamus or other appropriate action or proceedings at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant hereof, including without limiting the generality of the foregoing, the enforcement of the performance of all duties required of the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the collecting of Revenues and the segregation and application of such Revenues as described in Section 5 of this Ordinance. After any default in payment or other default in performance, the registered owners of the Bonds, the Outstanding Parity Bonds or any Additional Bonds shall be entitled to the appointment of a receiver for the Sewer System. Any and all actions brought by any registered owner or owners of the Bonds, the Outstanding Parity Bonds or Additional Bonds shall be maintained for the equal and ratable benefit of all registered owners of the Bonds, the Outstanding Parity Bonds and Additional Bonds outstanding and no registered owners of any of the Bonds, the Outstanding Parity Bonds or Additional Bonds shall have any right in any manner whatsoever by any action or proceedings to affect, disturb or prejudice the pledge created by this Ordinance.

Section 12. The Mayor and City Clerk and City Treasurer of the City are hereby authorized to do all things and execute all documents as may by them be deemed necessary and proper to complete the issuance and sale of the Bonds contemplated by this Ordinance.

Section 13. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 14. This Ordinance shall be in force and take effect from and after its passage and approval as provided by law and shall be published in pamphlet form.

ORDINANCE NO. 9493 (Cont.)

PASSED AND APPROVED this 29th day of July, 2014.

Mayor

ATTEST:

Nicki Stoltenberg, Assistant to the City Administrator