

ORDINANCE NO. 5889, AS AMENDED

AN ORDINANCE SEEKING VOTER APPROVAL FOR THE CITY TO ACCEPT A PASS-THROUGH LOAN FROM THE ALASKA CLEAN WATER FUND TO GOLDEN HEART UTILITIES OF UP TO \$4.6256 MILLION FOR A SLUDGE DEWATERING PROJECT, UP TO \$650,623 FOR A CLARIFIER PROJECT, AND RATIFYING A LOAN OF \$637,830 FOR PRIOR IMPROVEMENTS AT THE CITY OWNED WASTEWATER TREATMENT FACILITY

WHEREAS, in 1997 the City sold its utility system to a consortium of buyers in exchange for \$87.5 million in cash, payoff of \$47.6 million in utility debt and other consideration; of the total proceeds, the City received \$2 million cash from the water/wastewater purchasers; and

WHEREAS, since the sale, the Peger Road wastewater treatment plant has been operated by Golden Heart Utilities (“GHU”) under the terms of a lease-purchase agreement paying \$33,075 per month to the City Permanent Fund; to-date the City has received over \$5.6 million in lease payments; and

WHEREAS, GHU has not exercised its option to purchase the treatment plant, opting to continue leasing the facility from the City; and

WHEREAS, as owner of the wastewater treatment plant, the City is eligible to borrow money at a low interest rate (1.5%) from the Alaska Clean Water Fund (“ACWF”), a fund administered by the State of Alaska, Department of Environmental Conservation, to assist eligible recipients in wastewater treatment; and

WHEREAS, a component of the plant known as the sludge dewatering system is nearing the end of its useful life, and GHU proposes to replace the current system with a new, upgraded dewatering facility. The new dewatering facility would be in its own building, which would reduce the air handling requirements on the main plant. The new facility would increase the amount of water removed from the sludge, thereby reducing the total sludge volume and the plant’s operating expenses; and

WHEREAS, the total cost of this project is \$4.6256 million, and the City is eligible to borrow up to that amount from the ACWF with repayment over 15 years at 1.5% interest; the City has applied for a project grant of \$2,775,360.00 that would reduce the amount of the loan accordingly; and

WHEREAS, loan proceeds would be passed through to GHU, and GHU would be responsible for repayment of the loan; and

WHEREAS, all costs incurred by GHU during the construction of the project will be submitted to the City for approval and payment; and

WHEREAS, the City and GHU have entered into the attached agreement whereby GHU provided assurances and remedies to protect the City from having to repay the loan; as part of the agreement, GHU would pay a loan origination fee of 0.5% of the actual loan amount to the City at loan inception, pay the full cost of City employee wage and overhead for time spent administering loans and grants, provide an annual financial audit as required by the City, and obtain a loan repayment guarantee from GHU's parent company, Fairbanks Sewer and Water, Inc.; and

WHEREAS, building this project with funds from a low interest loan from the ACWF will reduce the total cost of the project and will ultimately be a benefit to GHU's rate payers as follows: without any grant funds and using conventional financing, the project would result in an approximate rate increase of 2.89%. With the maximum grant funds and 1.5% loan, the project's approximate rate increase would be ~~0.56~~ 0.57%; and

WHEREAS, in addition to the sludge dewatering project, GHU proposes to rehabilitate the plant clarifier at a total project cost of \$1,626,558; a grant of \$975,935 has been awarded, and a 1.5% pass-through ACWF loan of \$650,623 is available; and

WHEREAS, the City previously accepted a pass through loan from the State to improve the wastewater treatment plant by the installation of a sodium hypochlorite system to replace the use of dangerous chlorine gas. The current balance of the loan is \$637,830. While voter approval of that loan should have been obtained previously, the voters have the chance now to ratify the loan so that ratepayers benefit from the low interest rate. If not ratified, the loan will need to be re-financed at higher rates.

WHEREAS, this ordinance does not take effect until it is ratified by a vote of eligible city voters,

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

Section 1. The Mayor is hereby authorized to

(a) execute any documents necessary to apply for and accept loans through the ACWF for up to \$4.6256 million for the wastewater treatment plant sludge dewatering plant project and up to \$650,623 for the clarifier project, and

(b) enter into the attached agreement with Golden Heart Utilities regarding the terms and conditions for repayment of the sludge dewatering loan and ratification of the 2008 sodium hypochlorite project loan.

Section 2. The City Clerk is directed to put this ordinance on the ballot for ratification by the voters of the City of Fairbanks at the 2012 general election.

Proposition ___:

INFORMATION: In 1997, the City sold its utility system to a consortium of buyers in exchange for \$87.5 million in cash, payoff of \$47.6 million in utility debt and other consideration; of the total proceeds, the City received \$2 million from the water/wastewater purchasers. As part of the overall utility sale, the Peger Road wastewater treatment plant has been operated by Golden Heart Utilities (“GHU”) subject to a lease-purchase agreement paying \$33,075 per month to the City Permanent Fund. GHU has not exercised its option to purchase the treatment plant, opting to continue leasing the facility from the City. Over \$5.6 million has been received in lease payments to date.

The City is eligible to borrow funds from the Alaska Clean Water Fund at 1.5% interest and proposes to borrow \$4.6256 million for the sludge dewatering system replacement project. GHU has agreed to repay this loan and interest in full, plus pay the City a 0.5% loan origination fee and other costs. If successful in obtaining grants to offset the loan amount, GHU estimates that ratepayers will see an increase of approximately ~~0.56~~ 0.57% to pay for this project. Using conventional financing sources, the increase would be approximately 2.89%.

In addition to the sludge dewatering project, an ACWF loan of up to \$650,623 at 1.5% interest for a plant clarifier is available to complete the project. GHU has agreed to repay this loan and interest in full, plus pay the City a 0.5% loan origination fee and other costs.

In addition, a loan for a prior wastewater improvement project, the installation of a sodium hypochlorite system, with a current balance of \$637,830, was not approved in advance by the City voters. Ratification of the loan at this time will allow GHU ratepayers to continue the benefit of the 1.5% low interest loan.

Ballot Question No ___:

Should City of Fairbanks Ordinance No. 5889 be ratified?

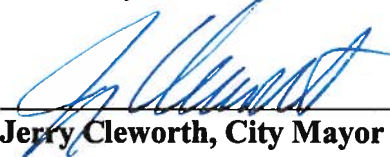
A “yes” vote ratifies Ordinance No. 5889, which would authorize the Mayor to enter into agreements with the State of Alaska and Golden Heart Utilities to borrow up to \$4,625,600.00 at 1.5% interest to construct a sludge dewatering system at the Peger Road Wastewater Treatment Plant and to borrow up to \$650,623.00 at 1.5% interest for the clarifier system project at the Wastewater Treatment Plant, both loans to be paid in full by Golden Heart Utilities, and which would ratify the 2008 loan (current balance of \$637,830.00) for construction of the sodium hypochlorite system at the Wastewater Treatment Plant.

A “no” vote rejects Ordinance No. 5889.

YES _____

NO _____


Section 3. That this ordinance was passed by this Council on the 20th day of August 2012 but will not become effective until ratified by the voters of the City of Fairbanks.



Jerry Cleworth, City Mayor

AYES: Matherly, Roberts, Stiver, Gatewood, Eberhart
NAYS: None
ABSENT: Hilling
ADOPTED: August 20, 2012

ATTEST:

for 

Janey Hovenden, CMC, City Clerk

APPROVED AS TO FORM:



Paul Ewers, City Attorney

LOAN REIMBURSEMENT AGREEMENT

BETWEEN

City of Fairbanks, Alaska

And

Golden Heart Utilities, Inc.

RECITALS

Whereas, the Wastewater Treatment Plant, located at 4247 Peger Road, Fairbanks, Alaska, is owned by the City of Fairbanks and leased and operated by Golden Heart Utilities, Inc., and more particularly described on attached "EXHIBIT A"; and

Whereas, the City of Fairbanks has applied for a loan from the Alaska Clean Water Fund FY12 in the amount of \$4,625,600, with an interest rate of 1.5 percent; and

Whereas, the loan proceeds would be passed on to Golden Heart Utilities, Inc., and used to fund Alaska Clean Water Fund Project Number 339091, which would demolish the current sludge dewatering system, which is nearing the end of its useful life, and replace it with new dewatering facilities, equipment and mixing trucks; and

Whereas, this upgrade to the Wastewater Treatment Plant will increase its efficiency and extend the life of the Plant; and

Whereas, financing this project by way of a low-interest loan from the Alaska Clean Water Fund will reduce the cost of the project which will ultimately benefit water and sewer rate payers; and

Whereas, this project is also eligible for grant funds through the State of Alaska, which could reduce the amount of loan by as much as \$2.77536 million; and

Whereas, under the terms of this Loan Reimbursement Agreement, Golden Heart Utilities, Inc., will be responsible for repayment of the loan proceeds; and

Whereas, in addition to other assurances set out below, Golden Heart Utilities' parent company, Fairbanks Sewer and Water, Inc., will guarantee the repayment of the loan.

TERMS AND CONDITIONS

1. Golden Heart Utilities, Inc. ("GHU"), whose address is 3691 Cameron Street, #201, Fairbanks, Alaska, 99709, promises to pay to the order of the City of Fairbanks ("the City"), whose address is 800 Cushman Street, Fairbanks, Alaska, 99701, the principal sum of

FOUR MILLION, SIX HUNDRED TWENTY-FIVE THOUSAND, SIX HUNDRED and 00/100 DOLLARS (\$4,625,600.00), representing the loan proceeds to the City from the Alaska Clean Water Fund FY12 loan for Project Number 339091. GHU promises to pay interest on the unpaid balance accruing at the rate of ONE AND ONE HALF PERCENT (1.5%) per annum, compounded monthly on the balance remaining from time to time unpaid.

The principal and interest shall be payable to the City at 800 Cushman Street, Fairbanks, Alaska, 99701 or at such other place as the City shall designate in writing, in ____ annual installments of approximately THREE HUNDRED FORTY-SIX THOUSAND SIX HUNDRED SIXTY-THREE and 00/100 DOLLARS (\$346,663. 00), with the exact amount of the annual payment to be as determined by the State of Alaska under the terms of the Clean Water Fund loan. The first payment will be due on the ___ day of _____ 201___. Subsequent annual loan payments by GHU to the City will be due six months before the date that the yearly payment is due and owing to the State of Alaska under the terms of the Clean Water Fund loan and shall continue on the same basis until such time as the principal and interest are paid in full. GHU has the right to prepay the annual payment or the entire loan balance at anytime without penalty.

In the event the City receives any grant money from the State of Alaska **for this project, such funds will be used to fund the project to the fullest extent possible and will reduce the amount of money that will need to be borrowed from** ~~to be applied to or offset the cost of Clean Water Fund Project #339091 and to the extent those grant funds eliminate or reduce the unpaid balance of the Clean Water Fund loan between the City and the State, then the amount due and payable by GHU shall be eliminated or reduced accordingly. If after grant funds are~~

~~applied to the Clean Water Fund loan there remains a balance on the loan, then **and** the annual payments due and payable under this Agreement shall be those payable under the terms of the Clean Water Fund loan, as **determined by the State of Alaska** provided for in the above paragraph.~~

The City agrees to remit payment to the State under the terms of the Clean Water Fund loan between the City and the State by use of funds paid by GHU to the City under the terms of this Agreement and for that purpose.

2. GHU agrees to pay to the City a loan origination fee of 0.5% of the loan amount, due and payable at the time the loan proceeds are disbursed by the City to GHU. GHU agrees to pay the full cost of City employee wage and overhead, in the same manner as currently calculated by the Alaska State Department of Transportation & Public Facilities for engineering reimbursement and subject to upward annual adjustments, for any time spent administering the ACWF loan, this loan repayment agreement, or any grants associated with this project. **All costs incurred by GHU under this section will be separate from any costs associated with the loan.**

3. GHU shall comply with all present and future contractual requirements of the contract between the City and the State Department of Environmental Conservation for Project #339091, including any demand for loan repayment in full by the State in the event of violation of the terms of the loan or for any other reason, as well as any regulatory requirements of the State of Alaska regarding use of these loan funds. The City agrees to provide written notice to GHU, within ten working days, of any assertion or notice of violation of the Clean Water Fund loan provisions, notice or request for audit or inspection, or any other such State action

implicating GHU's performance of Clean Water Fund Project #339091, repayment of the loan by GHU or the City, or cessation or extension of the Clean Water Fund or related loan programs.

4. Any and all structures and/or equipment constructed or purchased as part of Clean Water Fund Project Number 339091 with funds from the above-referenced loan will not be considered "betterments or improvements" under the terms of the Lease Agreement between the City and GHU dated October 6, 1997, and will remain the property of the City until such time as the loan is paid in full by GHU. **Upon full repayment by GHU, the City will transfer title to GHU of assets acquired with loan funds. Loan payments made by GHU will be considered as lease payments and when the loan is paid in full are equivalent to the fair market value of the assets.**

5. GHU shall list the City as a lienholder on the title of any equipment or vehicles purchased with funds from the loan that are required to be registered under the laws of the State of Alaska, and GHU further agrees that the City will have the right to secure its interest in all property acquired with loan proceeds by any legal means available.

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

7. In the event that any payment falling due hereunder is not paid within thirty (30) days after the due date thereof, the City may, at any time while such delinquency continues, declare the entire unpaid balance of this obligation, to include the outstanding principal balance, accrued interest, and all other amounts payable, immediately due and owing. Upon default of

payment, the City shall give GHU written notice of default via U.S. Postal Service, registered mail. GHU shall have 30 days to cure after receipt of written notice of default. GHU may cure the default by making full payment of any principal and accrued interest (including interest on these amounts) whose payment to the City is overdue.

8. ~~GHU agrees to execute an assignment of receivables and receipts to secure repayment of loan funds due under this Agreement, to become effective in the case of a default as described in the above paragraph.~~ GHU agrees to provide the City, upon request, a copy of GHU's audited financial statements. GHU agrees that it will maintain a debt to equity percentage (total liabilities **less Contributions In Aid of Construction (CIAC)**/shareholders' equity) not to exceed 160 240%.

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

10. GHU may not assign or transfer any of its rights or obligations under this Agreement without the express written consent of the City. Should GHU exercise its purchase option under the Lease Agreement between the City and GHU dated October 6, 1997, the City has the right to declare the entire unpaid balance of GHU's obligation, to include the outstanding principal balance, accrued interest, and all other amounts payable, immediately due and owing.

11. GHU shall indemnify, defend, protect, and hold the City and each of the City's employees, officers and agents free and harmless from and against any and all claims, liabilities, penalties, losses, or expenses (including attorney's fees) for death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or part, directly or

indirectly, by GHU's undertaking in regards to Project Number 339091 or in regards to this Agreement.

12. By signing below, GHU's parent, Fairbanks Sewer and Water, Inc., agrees to guarantee the loan repayment obligations of GHU in the event of default by GHU.

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

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

THE CITY OF FAIRBANKS

Date: _____

By: Jerry Cleworth, Mayor

State of Alaska)
) ss
Fourth Judicial District)

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2012, before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared Jerry Cleworth, the Mayor of the City of Fairbanks, and that he acknowledged before me that he executed the same on behalf of said City with authority so to do.

IN WITNESS WHEREOF, my hand and official seal.

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

GOLDEN HEART UTILITIES, INC.

Date: _____

By: _____
Its: President

State of Alaska)
) ss
Fourth Judicial District)

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2012, before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared _____, the President of Golden Heart Utilities, Inc., and that she/he acknowledged before me that she/he executed the same on behalf of said corporation with authority so to do.

IN WITNESS WHEREOF, my hand and official seal.

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

FAIRBANKS SEWER AND WATER, INC.

Date: _____

By: _____

Its: _____

State of Alaska)
) ss
Fourth Judicial District)

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2012, before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared _____, the President of Fairbanks Sewer and Water, Inc., and that she/he acknowledged before me that she/he executed the same on behalf of said corporation with authority so to do.

IN WITNESS WHEREOF, my hand and official seal.

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

“EXHIBIT A”

Loan Reimbursement Agreement

A tract of ground described by three separate deeds filed in the Fairbanks District Recorder's Office in Book 272 at Page 647, and in Book 380 at Page 688, and in Book 275 at Page 349, situated within the NW ¼ of the W ¼ and Government Lot 1, Section 28, T.1S., R.1W., Fairbanks Meridian, consolidated below without changing the intent of any of three said deeds, and more particularly described as follow:

Commencing at the Section corner common the Sections 20, 21, 28 and 29, T.1S., R.1W. F.M.; thence southerly 990 feet along the section line common to Sections 28 and 29 T.1S., R.1W. F.M. to the S-N-N 1/256 corner common to Sections 28 and 29 T.1S., R.1W. F.M, the TRUE POINT OF BEGINNING of this consolidation of descriptions of a contiguous tract; thence easterly 330 feet to the SW-NW-NW 1/256 corner of Section 28, T.1S., R.1W. F.M.; thence northerly 330 feet to the CW-NW-NW 1/256 corner of Section 28, T.1S., R.1W. F.M.; thence continuing along the northerly extension of the same line 30.00 feet to a point; thence easterly 990 feet to a point on the westernmost north-south 1/16 line of Section 28 T.1S., R.1W. F.M.; thence southerly 30.00 feet along the westernmost 1/16 line of Section 28 T.1S., R.1W. F.M., to the C-N-NW 1/64 corner on the westernmost N-S line of Section 28 T.1S., R.1W. F.M; thence southerly 660 feet along the westernmost N-S 1/16 line to the NW 1/16 corner of Section 28 T.1S., R.1W. F.M.; thence continuing along the southerly extension of the same line 102.63 feet to a point lying offset 100.00 feet north of the centerline of the Chena Lakes Flood Control Project; thence South 82° 42' 37" West parallel to and offset 100.00 feet north of said centerline a distance of 814.57 feet to a point; thence continuing parallel and offset 100.00 feet north of said centerline along a tangent curve to the right, said curve having a radius of 1809.86 feet and a delta angle of 16° 14' 40" through an arc length of 513.13 feet to a point on the section line common to Sections 28 and 29, T.1S., R.1W. F.M.; thence northerly along said section line to the S-N-N 1/256 corner common to sections 28 and 29, T.1S., R.1W. F.M., the TRUE POINT OF BEGINNING of this consolidated description of a contiguous tract, said description containing an area of 23.6 acres, more or less.