

ORDINANCE NO. 6125

**AN ORDINANCE TO PLACE BEFORE CITY VOTERS RATIFICATION
OF A PASS-THROUGH LOAN FROM THE ALASKA CLEAN WATER
FUND TO GOLDEN HEART UTILITIES FOR UP TO \$1.5 MILLION
FOR MAIN EXTENSION AND WATER PIPING 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 \$8.7 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, the Main Extension and Water Piping Improvements Project will extend a new 10" water main to the Wastewater Treatment Plant and replace existing process water systems; and

WHEREAS, the total cost of this project is \$1.45 million, and the City is eligible to borrow up to \$1.5 million from the ACWF with repayment over 10 years at 1.5% interest; 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 will enter into the attached agreement whereby GHU will provide 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 wages 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, using 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; and

WHEREAS, ratification of this ordinance by a vote of eligible city voters is required by the Alaska Constitution.

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

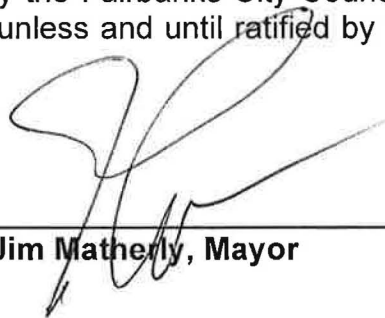
SECTION 1. The Mayor is hereby authorized to:

(a) execute any documents necessary to apply for and accept loans through the Alaska Clean Water Fund for up to \$1.5 million for the Wastewater Treatment Plant Main Extension and Water Piping Improvement Project; and

(b) enter into the attached agreement with Golden Heart Utilities regarding the terms and conditions for repayment of the loan.

SECTION 2. The City Clerk is directed to place this ordinance on the ballot for ratification by the voters of the City of Fairbanks at the 2020 general election.

SECTION 3. This Ordinance, enacted by the Fairbanks City Council on the 9th day of March 2020, does not become effective unless and until ratified by the voters of the City of Fairbanks.



Jim Matherly, Mayor

AYES: Pruhs, Therrien, Kun, Cleworth, Gibson, Rogers


NAYS: None

ABSENT: None

ADOPTED: March 9, 2020

ATTEST:

APPROVED AS TO FORM:



D. Danyielle Snider, CMC, City Clerk



Paul J. Ewers, City Attorney

Proposition A

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 \$8.7 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 up to \$1.5 million for the Wastewater Treatment Plant Main Extension and Water Piping Improvement 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. GHU estimates that ratepayers will see an increase of approximately 0.4% to pay for this project. Using conventional financing sources, the increase would be approximately 0.73%.

QUESTION: Should City of Fairbanks Ordinance No. 6125 be ratified?

A “yes” vote ratifies Ordinance No. 6125, which authorizes the Mayor to enter into agreements with the State of Alaska and Golden Heart Utilities (GHU) to borrow up to \$1.5 million at 1.5% interest from the Alaska Clean Water Fund for the Main Extension and Water Piping Improvement Project at the Peger Road Wastewater Treatment Plant, with GHU to pay in full all principal, interest, and fees.

A “no” vote rejects Ordinance No. 6125.

YES _____

NO _____

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 FY20 in the amount of **\$1,500,000**, 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 _____, which would extend a new 10" water main and replace the exiting process water system; 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, 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 **ONE MILLION, FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$1,500,000.00)**, representing the loan proceeds to the City from the Alaska Clean Water Fund FY20 loan for

Project Number _____. 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 ten annual installments of approximately ONE HUNDRED SIXTY-TWO THOUSAND, SIX HUNDRED FIFTY-TWO and 00/100 DOLLARS (\$162,652.00), 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 _____ 202____. 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.

2. 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.

3. 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 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.

4. 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 Number _____, 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 Number _____, repayment of the loan by GHU or the City, or cessation or extension of the Clean Water Fund or related loan programs.

5. Any and all structures and/or equipment constructed or purchased as part of Clean Water Fund Project Number _____ 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 amended on November 20, 2017, 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.

6. 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.

7. 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.

8. In the event that any payment falling due hereunder is not paid within 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.

9. 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%.

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

11. 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 amended

on November 20, 2017, 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.

12. 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 _____ or in regards to this Agreement.

13. 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.

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

15. 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: Jim Matherly, Mayor

State of Alaska)
) ss
Fourth Judicial District)

ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this _____ day of _____ 2020 before me, the undersigned, a NOTARY PUBLIC in and for the State of Alaska, personally appeared Jim Matherly, 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 _____ 2020 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 _____ 2020 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.