



ST. CHARLES  
SINCE 1834

**AGENDA ITEM EXECUTIVE SUMMARY**

|            |   |
|------------|---|
| Title:     | Recommendation to approve an Ordinance Authorizing the City of St. Charles to borrow funds from the IEPA Water Pollution Control Loan Program |
| Presenter: | Chris Minick  |

*Please check appropriate box:*

|                                     |                        |   |                              |
|-------------------------------------|------------------------|---|------------------------------|
| <input checked="" type="checkbox"/> | Government Operations  | X | Government Services 02.27.12 |
| <input type="checkbox"/>            | Planning & Development |   | City Council                 |
| <input type="checkbox"/>            | Public Hearing         |   |                              |

|                 |     |           |     |                                     |    |                          |
|-----------------|-----|-----------|-----|-------------------------------------|----|--------------------------|
| Estimated Cost: | N/A | Budgeted: | YES | <input checked="" type="checkbox"/> | NO | <input type="checkbox"/> |
|-----------------|-----|-----------|-----|-------------------------------------|----|--------------------------|

If NO, please explain how item will be funded:

**Executive Summary:**

The City is in the process of applying for a low interest loan through the IEPA's Water Pollution Control Loan Program for the construction of a **Biosolids/Operations Building at the Main Wastewater Treatment Plant**. In order to complete the application process, the City must be authorized to borrow funds through the Water Pollution Control Loan Program. The ordinance also authorizes the Mayor to execute a loan agreement with the IEPA.

The estimated cost of the total project is \$9,600,000, which includes a 5% contingency and construction engineering (project construction cost is \$8.4 million). The project was contemplated in the 2010/2011 Rate Study and was included in the FY 11/12 Budget. The loan will be repaid from revenues of the sewer system over a twenty-year period. The loan is not a general obligation of the City. The following is a comparison of the debt service obligations under an IEPA loan and Bonds.

|                         | Interest Rate | Annual Debt Payment | Annual Savings |
|-------------------------|---------------|---------------------|----------------|
| IEPA Loan               | 2.295%        | \$ 595,000          | \$ -           |
| General Obligation Bond | 2.3%          | \$ 641,000          | \$ 46,000      |
| Revenue Bond            | 3.2%          | \$ 657,000          | \$ 62,000      |

The Revenue Bond is the more accurate comparable as it is also payable from revenues of the System.

**Attachments:** *(please list)*

Ordinance; Attorney's Legal Opinion

**Recommendation / Suggested Action** *(briefly explain):*

Recommending a motion to approve an ordinance authorizing the City of St. Charles to borrow funds from the IEPA Water Pollution Control Loan Program.

*For office use only:*

*Agenda Item Number: 4.a*

**City of St. Charles, Illinois**  
**Ordinance No. 2012-M- \_\_\_\_\_**

**An Ordinance Authorizing the City of St. Charles, Kane and DuPage  
Counties, Illinois to Borrow Funds from the Water Pollution Control Loan  
Program**

WHEREAS, the City of St. Charles, Kane and DuPage Counties, Illinois (the “City”), operates its sewerage system (the “System”) in accordance with the provisions of Article VII, Section 6 of the Illinois Constitution of 1970 and the Local Government Debt Reform Act (30 ILCS 350/1 *et seq.*) (collectively, the “Acts”); and

WHEREAS, the Mayor and City Council of the City (the “Corporate Authorities”) have determined that it is advisable, necessary and in the best interest of the public health, safety and welfare to improve the System; and

WHEREAS, the Corporate Authorities desire to make the following improvements to the System, including, but not limited to: construction of a Biosolids/Operations Building at the Main Wastewater Treatment Plant, together with any required land or rights in land and all electrical, mechanical and other services necessary, useful or advisable to the construction and installation thereof (the “Project”), which Project has a useful life of more than twenty one (21) years; and

WHEREAS, the construction and installation of the Project shall be in accordance with the plans and specifications prepared by Trotter and Associates, Inc., consulting engineers for the City;

WHEREAS, the estimated cost of construction and installation of the Project, including

engineering, legal, financial and other related expenses is \$9,600,000, and there are insufficient funds on hand and lawfully available to pay these costs; and

WHEREAS, the Illinois Environmental Protection Agency desires, through the Water Pollution Control Loan Program, to provide funds to the City in the form of a loan for the purposes of constructing and installing the Project; and

WHEREAS, the City desires to obtain said loan; and

WHEREAS, the cost of the Project is expected to be paid from the proceeds of said loan; and

WHEREAS, the loan is to be repaid from revenues of the System; and

WHEREAS, the loan shall bear interest at a rate specified 35 Ill. Adm. Code 365.110 *et seq.*, but said rate shall not exceed the maximum rate authorized by the Bond Authorization Act (30 ILCS 305/0.01 *et seq.*), at the time of the issuance of the loan; and

WHEREAS, the principal and interest payments shall be payable semi-annually, and the loan shall mature in twenty (20) years, which is within the period of useful life of the Project; and

WHEREAS, in accordance with the provisions of the Acts and other applicable laws, the City is authorized to borrow funds from the Water Pollution Control Loan Program in the aggregate principal amount of \$9,600,000 to provide funds to pay the costs of the Project; and

WHEREAS, the loan to the City shall be made pursuant to a Loan Agreement, including certain terms and conditions between the City and the Illinois Environmental Protection Agency.

NOW THEREFORE, be it ordained by the Corporate Authorities of the City of St. Charles, Kane and DuPage Counties, Illinois, as follows:

SECTION 1. Incorporation of Preambles. The Corporate Authorities hereby find that the recitals contained in the preambles are true and correct, and incorporate them into this Ordinance by this reference.

SECTION 2. Determination to Borrow Funds. The Corporate Authorities hereby find and determine that: (1) it is necessary and in the best interests of the City to construct and install the Project for the public health, safety and welfare, in accordance with the plans and specifications, as described herein; (2) that the System continues to be operated in accordance with the provisions of the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*) and other applicable laws; and (3) that for the purpose of constructing the Project, it is hereby authorized that funds be borrowed by the City in the aggregate principal amount (which can include construction period interest financed over the term of the loan) in an amount not to exceed \$9,600,000.

SECTION 3. Additional Ordinances. The Corporate Authorities may adopt additional ordinances or proceedings supplementing or amending this Ordinance, providing for entering into the Loan Agreement with the Illinois Environmental Protection Agency, prescribing all the details of the Loan Agreement, and providing for the collection, segregation and distribution of the revenues of the System, so long as the maximum amount of the Loan Agreement as set forth in this Ordinance is not exceeded and there is no material change in the Project or purposes described herein. Any additional ordinances or proceedings shall in all instances become

effective in accordance with law. This Ordinance, together with such additional ordinances or proceedings, shall constitute complete authority for entering into the Loan Agreement under applicable law. However, notwithstanding the above, the City may not adopt additional ordinances or amendments which provide for any substantive or material change in the scope and intent of this Ordinance, including but not limited to interest rate, preference or priority of any other ordinance with this Ordinance, parity of any other ordinance with this Ordinance, or otherwise alter or impair the obligation of the City to pay the principal and interest due to the Water Pollution Control Loan Program without the written consent of the Illinois Environmental Protection Agency.

SECTION 4. Loan Not Indebtedness of City. Repayment of the loan to the Illinois Environmental Protection Agency by the City pursuant to this Ordinance is to be solely from the revenue derived from revenues of the System, and the loan does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation.

SECTION 5. Application for Loan. The Mayor is hereby authorized and directed to make application to the Illinois Environmental Protection Agency for a loan through the Water Pollution Control Loan Program, in accordance with the loan requirements set forth in 35 Ill. Adm. Code 365.010 *et seq.*

SECTION 6. Acceptance of Loan Agreement. The Corporate Authorities hereby authorize acceptance of the offer of a loan through the Water Pollution Control Loan Program, including all terms and conditions of the Loan Agreement as well as all special conditions contained therein and made a part thereof by reference. The Corporate Authorities further agree that the loan funds awarded shall be used solely for the purposes of the Project as approved by the Illinois Environmental Protection Agency in accordance with the terms and conditions of the Loan Agreement.

SECTION 7. Authorization of the City Officials to Execute Loan Agreement. The Mayor is hereby authorized and directed to execute a Loan Agreement with the Illinois Environmental Protection Agency. The Corporate Authorities may authorize by resolution a person other than the Mayor for the sole purpose of authorizing or executing any documents associated with payment requests or reimbursements from the Illinois Environmental Protection Agency in connection with this loan.

SECTION 8. Severability. If any section, paragraph, clause or provision of this Ordinance is held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 9. Repealer. All ordinances, resolutions, orders, or parts thereof, which conflict with the provisions of this Ordinance, to the extent of such conflict, are hereby repealed.

SECTION 10. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form in the manner as provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this \_\_\_\_ day of  
February, 2012.

PASSED by the City Council of the City of St. Charles, Illinois, this \_\_\_\_ day of  
February, 2012.

APPROVED by the City Council of the City of St. Charles, Illinois, this \_\_\_\_ day of  
February, 2012.

\_\_\_\_\_  
Donald P. DeWitte, Mayor

ATTEST:

\_\_\_\_\_  
Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

\_\_\_\_\_, 2012

Ms. Vera Herst  
Illinois Environmental Protection Agency  
1021 North Grand East  
P.O. Box 19276  
Springfield, IL 62794-9276

Re: Water Pollution Control Loan Program – St. Charles  
Biosolids/Operations Building Project

Dear Ms. Herst:

In connection with the above described project for the City of St. Charles, Kane and DuPage Counties, Illinois, I have reviewed relevant documents, which include the following: Ordinance Number 2012-M-\_\_\_\_ entitled “An Ordinance Authorizing the City of St. Charles, Kane and DuPage Counties, Illinois to Borrow Funds from the Water Pollution Control Loan Program” (the “Ordinance”) and such other documents as we have deemed pertinent.

Based upon my review of the foregoing, we are of the opinion that:

1. The City of St. Charles is a duly organized municipality of the State of Illinois, validly existing and in good standing under the Constitution and Laws of the State of Illinois. The City of St. Charles is a home rule unit of local government under the Constitution of the State of Illinois and is governed by City Council consisting of the Mayor and ten (10) aldermen.
2. The City Council has duly enacted and effectively adopted the Ordinance authorizing the borrowing of funds from the Illinois Environmental Protection Agency Water Pollution Control Loan Program.
3. The execution of the Loan Agreement and related documents pursuant to the provisions of said Ordinance and relevant provisions of the Illinois Administrative Code will constitute valid and binding obligations of the City in accordance with the terms as set forth in said documents.
4. The passage of the Ordinance and the execution of the Loan Agreement and related documents will not conflict with, or result in a breach of any provision of, or constitute

a default under, any indenture, mortgage, deed of trust or other agreement or instruments to which the City is a party or by which it or its properties are bound.

5. There are no obligations which are senior to the proposed loan with the Illinois Environmental Protection Agency Public Water Supply Loan Program.

This opinion is predicated solely upon laws and regulations in existence as of the present date and as they presently apply. Further, this opinion is rendered solely for your benefit and no other parties shall be entitled to rely on any matters set forth herein without the express written consent of the undersigned. This opinion is limited to the IEPA Loan (St. Charles Biosolids/Operations Building Project) described above and no opinion may be inferred or implied beyond that expressly stated in this letter.

Very Truly Yours,

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Gorski & Good, LLP