

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.d

Title: Recommendation to approve an Ordinance Authorizing the City of St. Charles to borrow funds from the IEPA Water Pollution Control Loan Program for Biosolids / Operational Building

Presenter: Tim Wilson

Meeting: Government Services Committee

Date: July 24, 2017

Proposed Cost: \$154,990.32

Budgeted Amount: \$0

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

During the 2013-2014 fiscal years, the City constructed a new Biosolids / Operational building. The project was funded by a low interest loan through the IEPA's Water Pollution Control Loan Program. Overall the project was budgeted at \$10,149,065. At the time City Council approved only loan eligible funds which totaled \$9,568,815. Loan eligible funds at this time included only construction, construction engineering and construction contingency costs, not construction interest costs.

Construction interest in the amount of \$159,175.32 was not included in any of the original loan request. However for this project the City did decide to include the construction interest in the total loan amount and has only recently been informed by IEPA that the loan amount that was approved did not include construction interest.

As a housekeeping item we are asking for an amendment to the loan agreement and an increase in the total amount borrowed of \$154,990.32 to cover the construction interest, which is the difference between the construction interest amount and the amount the project was under budget, \$4,183.00.

Attachments *(please list):*

* 2012 - IEPA Loan Agreement * 2017 – Authorized Loan Amendment Ordinance

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve an Ordinance Authorizing the City of St. Charles to borrow additional funds from the IEPA Water Pollution Control Loan Program for Biosolids / Operational Building in the amount of \$154,990.32.

LOAN AGREEMENT

Copy

WASTEWATER PROJECT: L17-4716

LENDOR:

Illinois Environmental Protection Agency
Bureau of Water
Infrastructure Financial Assistance Section
P.O. Box 19276
1021 North Grand Avenue, East
Springfield, IL 62794-9276

RECIPIENT:

St. Charles
2 East Main Street
St. Charles, IL 60174-1926

FEIN: 366-006-090

TERMS OF THE LOAN

Loan amount: \$ 9,595,815.00
Annual fixed loan rate: 2.2950 %
Term: 20 years
Repayments: Semi-annual
Construction start: 11/01/2012
Construction complete: 05/05/2014

Initiation of operation: 02/04/2014
Initiation of repayment period: 02/04/2014
First repayment due: 08/04/2014
Final repayment due: 02/04/2034

LOAN OFFER AND ACCEPTANCE

Offer by the State of Illinois Environmental Protection Agency

The Director (herein called the "Director") of the Illinois Environmental Protection Agency (herein called the "Agency") pursuant to the Environmental Protection Act, hereby offers to make a loan from the Water Revolving Fund, up to and not exceeding the above specified amount, at the fixed loan rate and repayment period given above, for the support of the efforts contained in the Project Description, herein. This Loan Offer is subject to all applicable State and Federal statutory and regulatory provisions, Standard and Special Loan Conditions, Procedures For Issuing Loans From the Water Pollution Control Loan Program (35 Ill. Adm. Code 365) and the terms specified in the Letter of Transmittal, attached hereto and included herein by reference.

John J. Kim
Agency Signature

John J. Kim, Interim Director
Name and Title

9/27/12
Date

Lisa Bonnett
Agency Signature

Lisa Bonnett, Deputy Director
Name and Title

Date

This offer must be accepted, if at all, on or before 11/01/2012.

Acceptance on behalf of the Borrower (SIGNATURE)

Donald P. DeWitte
Authorized Representative

10/26/12
Date

Donald P. DeWitte, Mayor
Name and Title of Authorized Representative (Type or Print)

PROJECT DESCRIPTION

Funds will be utilized to construct a new main building and sludge handling building at St. Charles' Main Wastewater Treatment Plant. Project includes: 68,513 gallon Waste Activated Sludge (WAS) Storage Tank; WAS-Aeration Diffusion System; New Gravity Belt Thickener (GBT); GBT Feed Pumps; Liquid Polymer Feed System; 73,462 gallon Thickened WAS Holding Tank and transfer pumps; 3 Aeration Basin Blowers; Digested Sludge Dewatering System with 2 centrifuges and a screw conveyor system; 30-foot Digested Sludge Storage Tank; New Chemical Storage Room Addition; Operations Room, SCADA System Improvements, and all miscellaneous piping, electrical equipment, plus necessary ancillary appurtenances detailed in the basis of designs, plans and specifications. This work is covered by IEPA Construction Permit Number 2012-AB-0029.

PROJECT BUDGET

	TOTAL	ELIGIBLE
Design Engineering	\$ 444,000.00	- 0 -
Construction Engineering	541,000.00	509,000.00
Construction	8,897,150.00	8,822,150.00
Contingency	266,915.00	264,665.00
Total Costs	\$ 10,149,065.00	9,595,815.00

The loan amount is \$ 9,595,815.00

COSTS EXCLUDED

LOAN INELIGIBLE

1. Cash allowances are ineligible at the time of bidding, but will be reviewed for eligibility and may be paid from the contingency line item of the loan when the actual costs are known. The construction contract included the following allowances:

- Gas Service - \$20,000
- Electrical Service - \$15,000
- Unforeseen Piping Conflicts - \$20,000
- Unforeseen Electrical Conflicts - \$20,000

2. The Construction Engineering contract included a \$4,000 warranty and \$28,000 LEED Building Certification which are not loan eligible costs. Extended warranties are generally loan ineligible costs.

3. Loan Funds have not been requested for Design Engineering fees. If the Design Engineering contract is amended to meet loan eligibility requirements, Design Engineering fees may be requested to be paid from available loan contingency funds.

STANDARD CONDITIONS

See Attachment A

Attachment A

Loan Recipient: St. Charles
L174716

Loan Agreement – Standard Conditions Illinois EPA Public Water Supply Loan Program

1. PROJECT SCHEDULE

For the purposes of this agreement, the start date will be the date the agreement is executed by the governmental entity and the complete date will be the date of final repayment. Any obligation of the State of Illinois and the Agency to make any disbursement of loan funds shall terminate unless this project work is initiated and completed in accordance with the schedule contained in the Loan Agreement.

2. DISBURSEMENTS

Disbursement requests for project work will be processed based on costs incurred, subject to the appropriation of funds by the Illinois General Assembly. Such disbursement requests will be monitored for compliance with applicable state and federal laws and regulations, including Section 705/4(b)(2) of the Illinois Grant Funds Recovery Act (30 ILCS 705), and shall constitute quarterly reports as required therein by describing the progress of the project and the expenditure of the loan funds related thereto. Any loan funds remaining unexpended in the project account after all application loan conditions have been satisfied and a final loan amendment has been executed shall be returned to the State within forty-five (45) days of the execution date on the final loan amendment.

3. REPAYMENT SCHEDULE – Nature of Obligations, Fixed Loan Rate, Interest, Loan Support, and Principal Payments.

- a) In accordance with Ill. Adm. Code 662.440, the fixed rate is comprised of interest and loan support, both of which are established annually and will be reported at the Agency's public hearing. The term "interest" is used in this Loan Agreement as well as future correspondence, repayment schedules, etc. to reflect both interest and loan support.
- b) This Loan Agreement has been issued and entered into pursuant to an authorizing ordinance of the loan recipient. The recipient recites that it has taken all required actions to enter into the Loan Agreement and has complied with all provisions of law in that regard.
- c) By this Loan Agreement, the loan recipient agrees to repay to the Agency (or, upon notice by the Agency to the loan recipient, the Agency's assignee) the principal amount of the loan with interest on the outstanding and unpaid principal amount of the loan from time to time until repaid in full, all as provided in this Loan Agreement.
- d) For purposes of determining the repayment amount, the principal amount of the loan shall be the total amount of loan disbursements made by the Agency under this Loan Agreement, plus interest treated as principal as provided in paragraph (g) below. The amount financed shall not exceed the amount identified in the approved authorizing ordinance.
- e) The final principal amount will be determined by the Agency after a final disbursement request, final inspection and project review have been made to ensure all applicable loan conditions have been satisfied.
- f) Simple interest on each loan disbursement will begin on the day after the date of the issuance of a warrant by the Comptroller of the State of Illinois.

- g) Interest and principal on the loan will be due on the dates and in the amounts as set forth in repayment schedules provided for in this paragraph. Upon the initiation of the loan repayment period, the Agency shall establish and notify the loan recipient of an interim repayment schedule in accordance with the terms of this loan. After the Agency conducts the final review of the costs of the project to establish the final principal amount, the Agency shall establish and notify the loan recipient of a final repayment schedule. For purposes of calculating the repayment schedules, the Agency shall consider principal of the loan to consist of all unrepaid disbursements plus all unrepaid interest accrued on these disbursements at the time the schedule period begins. Each of these repayment schedules shall provide for repayment installments consisting of principal plus simple interest on the unpaid principal balance. The installment repayment amount may change when the interim repayment schedule is replaced by the final repayment schedule.
- h) Interest on each loan disbursement shall be calculated on the basis of the total number of days from the date the interest begins to accrue to the beginning of the repayment period and will be calculated on a daily basis using a 365 day year. All interest due on the principal of the loan during the repayment period is calculated on a periodic basis.
- i) The Loan Agreement shall be subject to prepayment at any time in whole or in part, at the option of the loan recipient, by payment of the outstanding principal plus accrued and unrepaid interest on that principal accrued to the date of prepayment.

4. MODIFIED OR SUBSEQUENT ORDINANCES

The ordinance authorizing entry into this Loan Agreement or dedicating the source of revenue shall not be amended or superseded substantively or materially without the prior written consent of the Agency.

5. DBE REPORTING REQUIREMENTS

The loan recipient is required to comply with the Disadvantaged Business Enterprise (DBE) reporting requirements as established and mandated by federal law and implemented in federal code: 40 CFR Part 33. Compliance with the code will necessarily involve satisfaction of the six (6) good faith efforts as set forth in the federal DBE program, and will require the use of the particular contract specifications and language for advertising of the project. More information and guidance on the DBE requirements is available on the IEPA web site at:

<http://www.epa.state.il.us/water/forms.html#financial-assistance>

6. COMPLIANCE WITH ACT AND REGULATIONS

The Agency shall not make any payments under this loan offer if the construction project has been completed and is being operated in violation of any of the provisions of the Safe Drinking Water Act, Environmental Protection Act and Public Water Supply Regulations of Illinois (Title 35: Subtitle F: Chapter I: Pollution Control Board Regulations and Chapter II: Agency Regulations) adopted thereunder.

7. FINAL INSPECTION

The loan recipient must notify the Agency in writing within 30 days of the completion of project construction and submit the final change order, along with the contractor's final costs. The plans of record should be forwarded to the appropriate Agency regional field office. The Agency will schedule the final inspection within 60 days of the receipt of the notice, provided all necessary change orders have been submitted and approved by the Agency.

8. OPERATION AND MAINTENANCE OF THE PROJECT

The Agency shall not approve the final inspection for the project unless the loan recipient has certified that the training and operation and maintenance documents have been provided in accordance with 35 Ill. Adm. Code 662.740.

9. FLOOD INSURANCE

Evidence must be provided that flood insurance has been acquired on eligible structures constructed under this Loan Agreement as soon as structures are insurable.

10. DELINQUENT LOAN REPAYMENTS

- a) In the event that a repayment is not made by a loan recipient according to the loan schedule of repayment, the loan recipient shall notify the Agency in writing within 15 days after the repayment due date in accordance with 35 Ill. Adm. Code 662.1120 Delinquent Loan Repayments.
- b) After the receipt of this notification, the Agency shall confirm in writing the acceptability of the loan recipient's response or take appropriate action.
- c) In the event that the loan recipient fails to comply with the above requirements, the Agency shall promptly issue a notice of delinquency which requires a written response within 30 days.
- d) Failure to take appropriate action shall cause the Agency to pursue the collection of the amounts past due, the outstanding loan balance and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 (30 ILCS 210) or by any other reasonable means as may be provided by law.

11. SINGLE AUDIT ACT

Federal funds from Capitalization Grants for the Drinking Water State Revolving Fund (i.e. see Catalogue of Federal and Domestic Assistance Number 66.468) which the Agency receives from the U.S. Environmental Protection Agency, may be used for this loan. Receipt of federal funds may require an annual audit which conforms to the Single Audit Act and O.M.B. Circular A-133. If a Single Audit is required, all loans from the Drinking Water State Revolving Fund receiving federal funds must be audited and included in the audit report. The Agency will notify the recipient of any federal funds disbursed during the recipient's fiscal year.

12. SUBCONTRACTS UNDER CONSTRUCTION CONTRACTS

The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by such prime contractor in awarding or executing such subcontracts shall comply with:

- a) All provisions of federal, State and local law.
- b) All provisions of 35 Ill. Adm. Code 662 with respect to fraud and other unlawful or corrupt practices.
- c) All provisions of 35 Ill. Adm. Code 662 with respect to access to facilities, records and audit of records.

13. REQUIREMENTS OF BOND ORDINANCE

If the dedicated source of revenue is pledged in a subordinate position to an existing revenue bond ordinance, the covenants regarding coverage and reserve shall be in accordance with 35 Ill. Adm. Code 662.930.

14. RECORDS RETENTION

The loan recipient agrees to establish and maintain the books and other financial records pertaining to this project in accordance with Generally Accepted Accounting Principles. The loan recipient shall maintain all books and records pertaining to this project for a period not less than 3 years from the date of the final loan closing. All records pertaining to the issuance of bonds and the repayment of this loan shall be maintained for a period not less than 3 years from the final repayment date. The loan recipient agrees to permit the Agency or its designated representatives, including the Illinois Auditor General and the Illinois Attorney General, to inspect and audit the books and financial records pertaining to the project and the expenditure of the loan funds related thereto.

15. CONTINUING DISCLOSURE

The recipient covenants and agrees that, if at any time the Agency shall notify the recipient that the recipient is deemed to be an "obligated person" for purposes of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"), the recipient shall promptly execute an undertaking in form acceptable to the Agency in compliance with the Rule in which the recipient shall agree, among other things, to provide annual financial information (as defined in the Rule) with respect to the recipient to all required information repositories for so long as the recipient shall be deemed an obligated person. The recipient shall be deemed to be an obligated person at any time one or more of the recipient's outstanding loans with the Agency which are pledged to secure bonds issued on behalf of the Agency and the aggregate principal amount of such loan or loans exceeds a percentage (currently 20%) of the aggregate principal amount of all loans of the Agency pledged to secure such bonds.

16. WAGE RATE REQUIREMENTS

The loan recipient is required to comply with Wage Rate requirements established in rules issued by the U.S. Department of Labor to implement the Davis-Bacon Wage Act and other related acts (29 CFR Parts 1, 3 and 5). These rules require a number of specific actions by the federal funding recipient (the IEPA), the sub-recipient (the loan recipient) and the contractor, including payroll record certification and reporting as required. More information and guidance on the Davis-Bacon Wage Act requirements are available on the IEPA web site at: <http://www.cpa.state.il.us/water/forms.html#financial-assistance>

17. REPORTING REQUIREMENTS

The loan recipient will be required to comply with the volume and frequency of reporting requirements that may be required by the federal or State funding authority.

18. ADDITIONAL COMPLIANCE ITEMS

The loan recipient, prime contractor(s) and subcontractor(s) shall comply with applicable federal funding certifications, non-discrimination statutes, regulations and environmental standards, including but not limited to the following:

- a) The Americans with Disabilities Act of 1990, as amended, and 42 USC 12101
- b) New Restrictions on Lobbying 40 CFR Part 34
- c) Complete and keep on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Form (I-9)

- d) False Claims Act – Prompt referral to USEPA’s Inspector General of any credible evidence of a false claim or criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds under this loan (Loan Recipient Only)
- e) The Coastal Zone Management Act of 1972, 16 U.S.C. 1451 (Loan Recipient Only)

19. CERTIFICATION

By accepting this loan offer, the loan recipient certifies under oath that all information in the loan agreement and the related loan application is true and correct to the best of the loan recipient’s knowledge, information and belief, and that the loan funds shall be used only for the purposes described in the loan agreement. This offer of loan funds is conditioned upon such certification.

State of Illinois)
)
) ss.
Counties of Kane and DuPage)

Certificate

I, NANCY GARRISON, certify that I am the duly elected and acting Municipal City Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on March 5, 2012, the Corporate Authorities of such municipality passed and approved Ordinance No. 2012-M-5, entitled

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

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2012-M-5, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on March 9, 2012, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 5th day of March 2012.



(S E A L)

Nancy Garrison
Municipal Clerk

City of St. Charles, Illinois

Ordinance No. 2012-M-5

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

**Adopted by the
City Council
of the
City of St. Charles
March 5, 2012**

**Published in pamphlet form by
authority of the City Council
of the City of St. Charles,
Kane and Du Page Counties,
Illinois, March 9, 2012**

Nancy Garrison

City Clerk



03/09/12
C. P. Puleo
J. M.

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MISCELLANEOUS	
PAGE	

City of St. Charles, Illinois
Ordinance No. 2012-M- 5

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 5th day of
March, 2012.

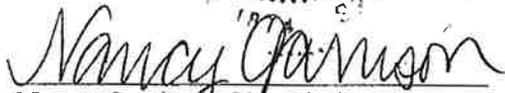
PASSED by the City Council of the City of St. Charles, Illinois, this 5th day of
March, 2012.

APPROVED by the City Council of the City of St. Charles, Illinois, this 5th day of
March, 2012.




Donald P. DeWitte, Mayor

ATTEST:


Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes: 9
Nays:
Absent: 1
Abstain:

LAW OFFICES OF
GORSKI & GOOD, LLP

GERALD M. GORSKI
THOMAS W. GOOD
ROBIN N. JONES

211 SOUTH WHEATON AVENUE
SUITE 305
P.O. BOX 611
WHEATON, ILLINOIS 60187-0611
(630) 665-7500
FAX (630) 665-8670

March 7, 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-5 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

Ms. Vera Herst

3/7/2012

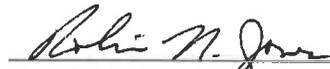
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a default under, any indenture, mortgage, deed of trust or other agreement or instruments to which the City is a party or by which it or its properties are bound.

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,



Gorski & Good, LLP

City of St. Charles, Illinois
Ordinance No. 2017-M- _____

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

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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 \$9,754,990.32, and there are insufficient funds on hand and lawfully available to pay these costs; and

WHEREAS, the City was authorized to borrow \$9,600,000 through the Water Pollution Control Loan Program pursuant to Ordinance 2012-M-5, adopted March 5, 2012; and

WHEREAS, the City has a need to borrow an additional \$154,990.32 so that the total amount the City is authorized to borrow is \$9,754,990.32; 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 365.10 *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 additional funds from the Water Pollution Control Loan

Program in the aggregate principal amount of \$154,990.32, for a total of \$9,754,990.32, 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 additional 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 \$154,990.32, for a total amount of \$9,754,990.32.

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
August, 2017.

PASSED by the City Council of the City of St. Charles, Illinois, this ____ day of
August, 2017.

APPROVED by the City Council of the City of St. Charles, Illinois, this ____ day of
August, 2017.

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain: