



## Legislation Details (With Text)

<b>File #:</b>	Res.0193-18	<b>Version:</b>	A	<b>Name:</b>	RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$13,088,291 WASTEWATER UTILITY REVENUE BONDS, SERIES 2018B, AND PROVIDING FOR OTHER DETAILS AND COVENANTS WITH RESPECT THERETO
<b>Type:</b>	Resolution	<b>Status:</b>			Passed
<b>File created:</b>	6/19/2018	<b>In control:</b>			City Attorney's Office
<b>On agenda:</b>	6/19/2018	<b>Final action:</b>			6/19/2018
<b>Title:</b>	RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$13,088,291 WASTEWATER UTILITY REVENUE BONDS, SERIES 2018B, AND PROVIDING FOR OTHER DETAILS AND COVENANTS WITH RESPECT THERETO				

WHEREAS, the City of Racine, Racine County, Wisconsin (the "Municipality") owns and operates a wastewater utility system (the "System") which is operated for a public purpose as a public utility by the Municipality; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Municipality and the residents thereof, consisting of the construction of a project (the "Project") assigned Clean Water Fund Program Project No. 4285-19 by the Department of Natural Resources, and as described in the Department of Natural Resources approval letter for the plans and specifications of the Project, or portions thereof, issued under Section 281.41, Wisconsin Statutes, assigned No. S-2017-0441 and dated June 21, 2017 and No. S-2017-0700 and dated December 21, 2017 by the DNR; and

WHEREAS, under the provisions of Chapter 66, Wisconsin Statutes any municipality may, by action of its governing body, provide for purchasing, acquiring, constructing, extending, adding to, improving, operating and managing a public utility from the proceeds of bonds, which bonds are to be payable only from the revenues received from any source by such utility, including all rentals and fees; and WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell wastewater utility system revenue bonds of the Municipality payable solely from the revenues of the System, pursuant to the provisions of Section 66.0621, Wisconsin Statutes, to pay the cost of the Project; and

WHEREAS, pursuant to Resolution No. 2640 adopted on August 2, 1999 (the "1999 Resolution"), the Municipality has previously issued its Wastewater Utility Revenue Bonds, Series 1999, dated August 25, 1999 (the "1999 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, pursuant to Resolution No. 3481 adopted on September 5, 2000 (the "2000 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2000, dated September 27, 2000 (the "2000 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds; and

WHEREAS, pursuant to Resolution No. 4544 adopted on March 19, 2002 (the "2002 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2002, dated April 10, 2002 (the "2002 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds and the 2000 Bonds; and

WHEREAS, pursuant to Resolution No. 4718 adopted on July 2, 2002 (the "2002B Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2002B, dated July 24, 2002 (the "2002B Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds and the 2002 Bonds; and

WHEREAS, pursuant to Resolution No. 4964 adopted on November 19, 2002 (the "2002C Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2002C, dated November 27, 2002 (the "2002C Bonds"), which are payable from the income and

revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds and the 2002B Bonds; and

WHEREAS, pursuant to Resolution No. 07-0580 adopted on January 2, 2008 (the "2008 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2008, dated January 23, 2008 (the "2008 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds, the 2002B Bonds and the 2002C Bonds; and

WHEREAS, pursuant to Resolution No. 10-1886 adopted on March 2, 2010 (the "2010 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2010, dated March 24, 2010 (the "2010 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds, the 2002B Bonds, 2002C Bonds and the 2008 Bonds; and

WHEREAS, pursuant to Resolution No. 0149-18 adopted on May 15, 2018 (the "2018 Resolution"), the Municipality has also previously issued its Taxable Wastewater Utility Revenue Bonds, Series 2018, dated May 23, 2018 (the "2018 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds, the 2002B Bonds, 2002C Bonds, the 2008 Bonds and the 2010 Bonds; and

WHEREAS, the 1999 Resolution, 2000 Resolution, 2002 Resolution, 2002B Resolution, 2002C Resolution, 2008 Resolution, 2010 Resolution and the 2018 Resolution (collectively, the "CWF Resolutions") permit bonds to be issued on a parity with the 1999 Bonds, 2000 Bonds, 2002 Bonds, 2002B Bonds, 2002C Bonds, 2008 Bonds, 2010 Bonds and the 2018 Bonds (collectively, the "CWF Bonds") upon certain conditions, and those conditions have been met in connection with the issuance of the bonds to be issued pursuant to this Resolution; and

WHEREAS, other than the CWF Bonds, no bonds or obligations payable from the revenues of the System are now outstanding.

NOW, THEREFORE, be it resolved by the Governing Body of the Municipality that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

- (a) "Act" means Section 66.0621, Wisconsin Statutes;
- (b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Bonds;
- (c) "Bonds" means the \$13,088,291 Wastewater Utility Revenue Bonds, Series 2018B, of the Municipality dated their date of issuance, authorized to be issued by this Resolution;
- (d) "Bond Year" means the twelve-month period ending on each May 1;
- (e) "Current Expenses" means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits, but shall exclude depreciation, debt service, tax equivalents and capital expenditures;
- (f) "CWF Bonds" means the 1999 Bonds, 2000 Bonds, 2002 Bonds, 2002B Bonds, 2002C Bonds, 2008 Bonds, 2010 Bonds and 2018 Bonds, collectively;
- (g) "CWF Resolutions" means the 1999 Resolution, 2000 Resolution, 2002 Resolution, 2002B Resolution, 2002C Resolution, 2008 Resolution, 2010 Resolution and 2018 Resolution, collectively;
- (h) "Debt Service Fund" means the Wastewater Utility Special Redemption Fund of the Municipality, which shall be the "special redemption fund" as such term is defined in the Act;
- (i) "Financial Assistance Agreement" means the Financial Assistance Agreement by and between the State of Wisconsin by the Department of Natural Resources and the Department of Administration and the Municipality pursuant to which the Bonds are to be issued and sold to the State, substantially in the form attached hereto and incorporated herein by this reference;
- (j) "Fiscal Year" means the twelve-month period ending on each December 31;
- (k) "Governing Body" means the Common Council, or such other body as may hereafter be the chief legislative body of the Municipality;
- (l) "Gross Earnings" means the gross earnings of the System, including earnings of the System derived from wastewater utility charges imposed by the Municipality, all payments to the Municipality under any wastewater treatment service agreements between the Municipality and any contract users of the System, and any other monies received from any source including all rentals and fees and any special assessments levied and collected in connection with the Project;
- (m) "Municipal Treasurer" means the Treasurer of the Municipality who shall act as Bond Registrar

and Paying Agent;

(n) "Municipality" means the City of Racine, Racine County, Wisconsin;

(o) "Net Revenues" means the Gross Earnings of the System after deduction of Current Expenses;

(p) "1999 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 1999, dated August 25, 1999;

(q) "1999 Resolution" means Resolution No. 2640 adopted on August 2, 1999 authorizing the issuance of the 1999 Bonds;

(r) "Parity Bonds" means bonds payable from the revenues of the System other than the Bonds but issued on a parity and equality with the Bonds pursuant to the restrictive provisions of Section 11 of this Resolution;

(s) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Municipality as part of the System as described in the preamble hereto;

(t) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date;

(u) "System" means the entire wastewater utility system of the Municipality specifically including that portion of the Project owned by the Municipality and including all property of every nature now or hereafter owned by the Municipality for the collection, transmission, treatment and disposal of domestic and industrial sewerage and waste, including all improvements and extensions thereto made by the Municipality while any of the Bonds and Parity Bonds remain outstanding, including all real and personal property of every nature comprising part of or used or useful in connection with such wastewater utility system and including all appurtenances, contracts, leases, franchises, and other intangibles;

(v) "2000 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2000, dated September 27, 2000;

(w) "2000 Resolution" means Resolution No. 3481 adopted on September 5, 2000 authorizing the issuance of the 2000 Bonds;

(x) "2002 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2002, dated April 10, 2002;

(y) "2002 Resolution" means Resolution No. 4544 adopted on March 19, 2002 authorizing the issuance of the 2002 Bonds;

(z) "2002B Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2002B, dated July 24, 2002;

(aa) "2002B Resolution" means Resolution No. 4718 adopted July 2, 2002 authorizing the issuance of the 2002B Bonds;

(bb) "2002C Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2002C, dated November 27, 2002;

(cc) "2002C Resolution" means Resolution No. 4964 adopted November 19, 2002 authorizing the issuance of the 2002C Bonds;

(dd) "2008 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2008, dated January 23, 2008;

(ee) "2008 Resolution" means Resolution No. 07-0580 adopted January 2, 2008 authorizing the issuance of the 2008 Bonds;

(ff) "2010 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2010, dated March 24, 2010;

(gg) "2010 Resolution" means Resolution No. 10-1886 adopted March 2, 2010 authorizing the

issuance of the 2010 Bonds;

(hh) "2018 Bonds" means the Municipality's Taxable Wastewater Utility Revenue Bonds, Series 2018, dated May 23, 2018; and

(ii) "2018 Resolution" means Resolution No. 0149-18 adopted May 15, 2018 authorizing the issuance of the 2018 Bonds.

Section 2. Authorization of the Bonds and the Financial Assistance Agreement. For the purpose of paying the cost of the Project (including legal, fiscal, engineering and other expenses), there shall be borrowed on the credit of the income and revenue of the System up to the sum of \$13,088,291; and fully registered revenue bonds of the Municipality are authorized to be issued in evidence thereof and sold to the State of Wisconsin Clean Water Fund Program in accordance with the terms and conditions of the Financial Assistance Agreement, which is incorporated herein by this reference and the Mayor and City Clerk of the Municipality are hereby authorized, by and on behalf of the Municipality, to execute the Financial Assistance Agreement.

Section 3. Terms of the Bonds. The Bonds shall be designated "Wastewater Utility Revenue Bonds, Series 2018B" (the "Bonds"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 1.870% per annum; shall be issued in denominations of \$0.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Assistance Agreement and in the Bond form attached hereto as Exhibit A as it is from time to time adjusted by the State of Wisconsin based upon the actual draws made by the Municipality. Interest on the Bonds shall be payable commencing on November 1, 2018 and semiannually thereafter on May 1 and November 1 of each year. The Bonds shall not be subject to redemption prior to maturity except as provided in the Financial Assistance Agreement.

The schedule of maturities of the Bonds is found to be such that the amount of annual debt service payments is reasonable in accordance with prudent municipal utility practices.

Section 4. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

The Bonds shall be executed in the name of the Municipality by the manual signatures of the Mayor and City Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Bonds shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's Bond Registrar.

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Bond will be payable upon presentation and surrender of the Bond to the Bond Registrar. Payment of principal on the Bond (except the final maturity) and each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Municipality and mailed to such registered owner at his or its address as it appears on such registration books or at such other address may be furnished in writing by such registered owner to the Bond Registrar.

Section 5. Security for the Bonds. The Bonds, together with interest thereon, shall not constitute an indebtedness of the Municipality nor a charge against its general credit or taxing power. The Bonds, together with interest thereon, shall be payable only out of the Debt Service Fund hereinafter created and established, and shall be a valid claim of the registered owner or owners thereof only against such Debt Service Fund and the revenues of the System pledged to such fund, on a parity with the pledge granted to the holders of the CWF Bonds. Sufficient revenues are hereby pledged to said Debt Service Fund, and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the CWF Bonds, the Bonds and any Parity Bonds as the same becomes due.

Section 6. Funds and Accounts. In accordance with the Act, for the purpose of the application and proper allocation of the revenues of the System, and to secure the payment of the principal of and interest on the CWF Bonds, the Bonds and Parity Bonds, certain funds of the System were created and established by a resolution adopted April 20, 1993 and continued by the CWF Resolutions are hereby further continued and shall be used solely for the following respective purposes:

(a) Wastewater Utility Revenue Fund (the "Revenue Fund"), into which shall be deposited as received the Gross Earnings of the System, which money shall then be divided among the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund in the amounts and in the manner set forth in Section 7 hereof and used for the purposes described below.

- (b) Wastewater Utility Operation and Maintenance Fund (the "Operation and Maintenance Fund"), which shall be used for the payment of Current Expenses.
- (c) Wastewater Utility Special Redemption Fund (the "Debt Service Fund"), which shall be used for the payment of the principal of, premium, if any, and interest on the CWF Bonds, the Bonds and Parity Bonds as the same becomes due, and which may contain a Reserve Account established by a future resolution authorizing the issuance of Parity Bonds to secure such Parity Bonds.
- (d) Wastewater Utility Depreciation Fund (the "Depreciation Fund"), which shall be used to provide a proper and adequate depreciation account for the System.
- (e) Wastewater Utility Surplus Fund (the "Surplus Fund"), which shall first be used whenever necessary to pay principal of, premium, if any, or interest on the CWF Bonds, the Bonds and Parity Bonds when the Debt Service Fund shall be insufficient for such purpose, and thereafter shall be disbursed as follows: (i) at any time, to remedy any deficiency in any of the Funds provided in this Section 6 hereof; and (ii) money thereafter remaining in the Surplus Fund at the end of any Fiscal Year may be transferred to any of the funds or accounts created herein or to reimburse the general fund of the Municipality for advances made by the Municipality to the System.

Section 7. Application of Revenues. After the delivery of the Bonds, the Gross Earnings of the System shall be deposited as collected in the Revenue Fund and shall be transferred monthly to the funds listed below in the following order of priority and in the manner set forth below:

- (a) to the Operation and Maintenance Fund, in an amount equal to the estimated Current Expenses for such month and for the following month (after giving effect to available amounts in said Fund from prior deposits);
- (b) to the Debt Service Fund, an amount equal to one-sixth (1/6) of the next installment of interest coming due on the CWF Bonds, the Bonds and any Parity Bonds then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the CWF Bonds, the Bonds and any Parity Bonds coming due during such Bond Year (after giving effect to available amounts in said Fund from accrued interest, any premium or any other source), and any amount required by a future resolution authorizing the issuance of Parity Bonds to fund a Reserve Account established therein;
- (c) to the Depreciation Fund, an amount determined by the Governing Body to be sufficient to provide a proper and adequate depreciation account for the System; and
- (d) to the Surplus Fund, any amount remaining in the Revenue Fund after the monthly transfers required above have been completed.

Transfers from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund shall be made monthly not later than the tenth day of each month, and such transfer shall be applicable to monies on deposit in the Revenue Fund as of the last day of the month preceding. Any other transfers and deposits to any fund required or permitted by subsection (a) through (d) of this Section, except transfers or deposits which are required to be made immediately or annually, shall be made on or before the tenth day of the month. Any transfer or deposit required to be made at the end of any Fiscal Year shall be made within sixty (60) days after the close of such Fiscal Year. If the tenth day of any month shall fall on a day other than a business day, such transfer or deposit shall be made on the next succeeding business day.

It is the express intent and determination of the Governing Body that the amounts transferred from the Revenue Fund and deposited in the Debt Service Fund shall be sufficient in any event to pay the interest on the CWF Bonds, the Bonds and any Parity Bonds as the same accrues and the principal thereof as the same matures, and to fund the Reserve Account as required in connection with future Parity Bonds.

Section 8. Deposits and Investments. The Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of and interest on the CWF Bonds, the Bonds and any Parity Bonds as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34, Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603 (1m), Wisconsin Statutes. The other funds herein created (except the Wastewater Utility CWFP Project Fund) may be combined in a single account in a public depository selected in the manner set forth above and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

Section 9. Service to the Municipality. The reasonable cost and value of services rendered to the Municipality by the System by furnishing wastewater utility services for public purposes shall be charged against the Municipality and shall be paid in monthly installments as the service accrues, out of the current revenues of the Municipality collected or in the process of collection, exclusive of the

revenues derived from the System; that is to say, out of the tax levy of the Municipality made by it to raise money to meet its necessary current expenses. The reasonable cost and value of such service to the Municipality in each year shall be equal to an amount which, together with other revenues of the System, will produce in each Fiscal Year Net Revenues equivalent to not less than the annual principal and interest requirements on the CWF Bonds, the Bonds, any Parity Bonds and any other obligations payable from the revenues of the System then outstanding, times the greater of (i) 110% or (ii) the highest debt service coverage ratio required with respect to any obligations payable from revenues of the System then outstanding. However, such payment out of the tax levy shall be subject to (a) approval of the Public Service Commission, or successors to its function, if applicable, (b) yearly appropriations therefor, and (c) applicable levy limitations, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the Municipality to make any such appropriation over and above the reasonable cost and value of the services rendered to the Municipality and its inhabitants or to make any subsequent payment over and above such reasonable cost and value.

Section 10. Operation of System; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Bonds, and each of them, that the Municipality will perform all of the obligations of the Municipality as set forth in the Financial Assistance Agreement.

Section 11. Additional Bonds. The Bonds are issued on a parity with the CWF Bonds as to the pledge of revenues of the System. No bonds or obligations payable out of the revenues of the System may be issued in such manner as to enjoy priority over the Bonds. Additional obligations may be issued if the lien and pledge is junior and subordinate to that of the Bonds. Parity Bonds may be issued only under the following circumstances:

(a) Additional Parity Bonds may be issued for the purpose of completing the Project and for the purpose of financing costs of the Project which are ineligible for payment under the State of Wisconsin Clean Water Fund Program. However, such additional Parity Bonds shall be in an aggregate amount not to exceed 20% of the face amount of the Bonds; or

(b) Additional Parity Bonds may also be issued if all of the following conditions are met:

(1) The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional bonds must have been in an amount at least equal to the maximum annual interest and principal requirements on all bonds outstanding payable from the revenues of the System, and on the bonds then to be issued, times the greater of (i) 1.10 or (ii) the highest debt service coverage ratio to be required with respect to the Additional Parity Bonds to be issued or any other obligations payable from the revenues of the System then outstanding. Should an increase in permanent rates and charges, including those made to the Municipality, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional bonds or during that part of the Fiscal Year of issuance prior to such issuance, then Net Revenues for purposes of such computation shall include such additional revenues as an independent certified public accountant, consulting professional engineer or the Wisconsin Public Service Commission may certify would have accrued during the prior Fiscal Year had the new rates been in effect during that entire immediately prior Fiscal Year.

(2) The payments required to be made into the funds enumerated in Section 6 of this Resolution must have been made in full.

(3) The additional bonds must have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year.

(4) The proceeds of the additional bonds must be used only for the purpose of providing extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 12. Sale of Bonds. The sale of the Bonds to the State of Wisconsin Clean Water Fund Program for the purchase price of up to \$13,088,291 and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Assistance Agreement and the Bonds as hereinabove provided, necessary to conclude delivery of the Bonds to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Bonds shall be paid upon requisition therefor as provided in the Financial Assistance Agreement, and the officers of the Municipality are authorized to prepare and submit to the State requisitions and disbursement requests in anticipation of the execution of the Financial Assistance Agreement and the issuance of the Bonds.

Section 13. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be deposited by the Municipality into a special fund designated as "Wastewater Utility CWFP Project Fund." The Wastewater Utility CWFP Project Fund shall be used solely for the purpose of paying the costs of the Project as more fully described in the preamble hereof and in the Financial Assistance Agreement.

Moneys in the Wastewater Utility CWFP Project Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 14. Amendment to Resolution. After the issuance of any of the Bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except: (a) the Municipality may, from to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and (b) this Resolution may be amended, in any respect, with a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the Municipality; provided, however, that no amendment shall permit any change in the pledge of revenues derived from the System or the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bond, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.

Section 15. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The Municipality may discharge all Bonds due on any date by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S. Government, or of a commission, board or other instrumentality of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the Municipality's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the Municipality's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, provided that notice of the redemption of all prepayable Bonds on such date has been duly given or provided for.

Section 16. Rebate Fund. Unless the Bonds are exempt from the rebate requirements of the Internal Revenue Code of 1986, as amended (the "Code"), the Municipality shall establish and maintain, so long as the Bonds and any Parity Bonds are outstanding, a separate account to be known as the "Rebate Fund." The sole purpose of the Rebate Fund is to provide for the payment of any rebate liability with respect to the Bonds under the relevant provisions of the Code and the Treasury Regulations promulgated thereunder (the "Regulations"). The Rebate Fund shall be maintained by the Municipality until all required rebate payments with respect to the Bonds have been made in accordance with the relevant provisions of the Code and the Regulations.

The Municipality hereby covenants and agrees that it shall pay to the United States from the Rebate Fund, at the times and in the amounts and manner required by the Code and the Regulations, the portion of the "rebate amount" (as defined in Section 1.148-3(b) of the Regulations) that is due as of each "computation date" (within the meaning of Section 1.148-3(e) of the Regulations). As of the date of this Resolution, the provisions of the Regulations specifying the required amounts of rebate installment payments and the time and manner of such payments are contained in Sections 1.148-3(f) and (g) of the Regulations, respectively. Amounts held in the Rebate Fund and the investment income therefrom are not pledged as security for the Bonds or any Parity Bonds and may only be used for the payment of any rebate liability with respect to the Bonds.

The Municipality may engage the services of accountants, attorneys or other consultants necessary to assist it in determining the rebate payments, if any, owed to the United States with respect to the Bonds. The Municipality shall maintain or cause to be maintained records of determinations of rebate liability with respect to the Bonds for each computation date until six (6) years after the retirement of the last of the Bonds. The Municipality shall make such records available to the State of Wisconsin upon reasonable request therefor.

Section 17. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made, except as provided in Section 14, until all of the Bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the Municipality, the Governing Body thereof, and any and all officers and

agents thereof including, but without limitation, the right to require the Municipality, its Governing Body and any other authorized body, to fix and collect rates and charges fully adequate to carry out all of the provisions and agreements contained in this Resolution.

Section 18. Continuing Disclosure. The officers of the Municipality are hereby authorized and directed, if requested by the State of Wisconsin, to provide to the State of Wisconsin Clean Water Fund Program and to such other persons or entities as directed by the State of Wisconsin such ongoing disclosure regarding the Municipality's financial condition and other matters, at such times and in such manner as the Clean Water Fund Program may require, in order that securities issued by the Municipality and the State of Wisconsin satisfy rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended and as it may be amended from time to time, imposed on brokers and dealers of municipal securities before the brokers and dealers may buy, sell, or recommend the purchase of such securities.

Section 19. Conflicting Resolutions. All ordinances, resolutions (other than the CWF Resolutions), or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage. In case of any conflict between this Resolution and the CWF Resolutions, the CWF Resolutions shall control as long as any of the respective CWF Bonds are outstanding.

Fiscal Note: The FAA will make available up to \$13,788,291 with up to \$700,000.00 in principal forgiveness for the Lift Station No. 2 Storage Project.

**Sponsors:** Q.A. Shakoor II

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
6/19/2018	A	Common Council	Adopted	Pass

Alderman Shakoor

## RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$13,088,291 WASTEWATER UTILITY REVENUE BONDS, SERIES 2018B, AND PROVIDING FOR OTHER DETAILS AND COVENANTS WITH RESPECT THERETO

WHEREAS, the City of Racine, Racine County, Wisconsin (the "Municipality") owns and operates a wastewater utility system (the "System") which is operated for a public purpose as a public utility by the Municipality; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Municipality and the residents thereof, consisting of the construction of a project (the "Project") assigned Clean Water Fund Program Project No. 4285-19 by the Department of Natural Resources, and as described in the Department of Natural Resources approval letter for the plans and specifications of the Project, or portions thereof, issued under Section 281.41, Wisconsin Statutes, assigned No. S-2017-0441 and dated June 21, 2017 and No. S-2017-0700 and dated December 21, 2017 by the DNR; and

WHEREAS, under the provisions of Chapter 66, Wisconsin Statutes any municipality may, by action of its governing body, provide for purchasing, acquiring, constructing, extending, adding to, improving, operating and managing a public utility from the proceeds of bonds, which bonds are to be payable only from the revenues received from any source by such utility, including all rentals and fees; and

WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell wastewater utility system revenue bonds of the Municipality payable solely from the



revenues of the System, pursuant to the provisions of Section 66.0621, Wisconsin Statutes, to pay the cost of the Project; and

WHEREAS, pursuant to Resolution No. 2640 adopted on August 2, 1999 (the "1999 Resolution"), the Municipality has previously issued its Wastewater Utility Revenue Bonds, Series 1999, dated August 25, 1999 (the "1999 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, pursuant to Resolution No. 3481 adopted on September 5, 2000 (the "2000 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2000, dated September 27, 2000 (the "2000 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds; and

WHEREAS, pursuant to Resolution No. 4544 adopted on March 19, 2002 (the "2002 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2002, dated April 10, 2002 (the "2002 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds and the 2000 Bonds; and

WHEREAS, pursuant to Resolution No. 4718 adopted on July 2, 2002 (the "2002B Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2002B, dated July 24, 2002 (the "2002B Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds and the 2002 Bonds; and

WHEREAS, pursuant to Resolution No. 4964 adopted on November 19, 2002 (the "2002C Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2002C, dated November 27, 2002 (the "2002C Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds and the 2002B Bonds; and

WHEREAS, pursuant to Resolution No. 07-0580 adopted on January 2, 2008 (the "2008 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2008, dated January 23, 2008 (the "2008 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds, the 2002B Bonds and the 2002C Bonds; and

WHEREAS, pursuant to Resolution No. 10-1886 adopted on March 2, 2010 (the "2010 Resolution"), the Municipality has also previously issued its Wastewater Utility Revenue Bonds, Series 2010, dated March 24, 2010 (the "2010 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds, the 2002B Bonds, 2002C Bonds and the 2008 Bonds; and

WHEREAS, pursuant to Resolution No. 0149-18 adopted on May 15, 2018 (the "2018 Resolution"), the Municipality has also previously issued its Taxable Wastewater Utility Revenue Bonds, Series 2018, dated May 23, 2018 (the "2018 Bonds"), which are payable from the income and revenues of the System on a parity with the 1999 Bonds, the 2000 Bonds, the 2002 Bonds, the 2002B Bonds, 2002C Bonds, the 2008 Bonds and the 2010 Bonds; and

WHEREAS, the 1999 Resolution, 2000 Resolution, 2002 Resolution, 2002B Resolution, 2002C Resolution, 2008 Resolution, 2010 Resolution and the 2018 Resolution (collectively, the "CWF Resolutions") permit bonds to be issued on a parity with the 1999 Bonds, 2000 Bonds, 2002 Bonds,

2002B Bonds, 2002C Bonds, 2008 Bonds, 2010 Bonds and the 2018 Bonds (collectively, the "CWF Bonds") upon certain conditions, and those conditions have been met in connection with the issuance of the bonds to be issued pursuant to this Resolution; and

WHEREAS, other than the CWF Bonds, no bonds or obligations payable from the revenues of the System are now outstanding.

NOW, THEREFORE, be it resolved by the Governing Body of the Municipality that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

- (a) "Act" means Section 66.0621, Wisconsin Statutes;
- (b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Bonds;
- (c) "Bonds" means the \$13,088,291 Wastewater Utility Revenue Bonds, Series 2018B, of the Municipality dated their date of issuance, authorized to be issued by this Resolution;
- (d) "Bond Year" means the twelve-month period ending on each May 1;
- (e) "Current Expenses" means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits, but shall exclude depreciation, debt service, tax equivalents and capital expenditures;
- (f) "CWF Bonds" means the 1999 Bonds, 2000 Bonds, 2002 Bonds, 2002B Bonds, 2002C Bonds, 2008 Bonds, 2010 Bonds and 2018 Bonds, collectively;
- (g) "CWF Resolutions" means the 1999 Resolution, 2000 Resolution, 2002 Resolution, 2002B Resolution, 2002C Resolution, 2008 Resolution, 2010 Resolution and 2018 Resolution, collectively;
- (h) "Debt Service Fund" means the Wastewater Utility Special Redemption Fund of the Municipality, which shall be the "special redemption fund" as such term is defined in the Act;
- (i) "Financial Assistance Agreement" means the Financial Assistance Agreement by and between the State of Wisconsin by the Department of Natural Resources and the Department of Administration and the Municipality pursuant to which the Bonds are to be issued and sold to the State, substantially in the form attached hereto and incorporated herein by this reference;
- (j) "Fiscal Year" means the twelve-month period ending on each December 31;
- (k) "Governing Body" means the Common Council, or such other body as may hereafter be the chief legislative body of the Municipality;
- (l) "Gross Earnings" means the gross earnings of the System, including earnings of the System derived from wastewater utility charges imposed by the Municipality, all payments to the Municipality under any wastewater treatment service agreements between the Municipality and any contract users of the System, and any other monies received from any source including all rentals and fees and any special assessments levied and collected in connection with the Project;

(m) "Municipal Treasurer" means the Treasurer of the Municipality who shall act as Bond Registrar and Paying Agent;

(n) "Municipality" means the City of Racine, Racine County, Wisconsin;

(o) "Net Revenues" means the Gross Earnings of the System after deduction of Current Expenses;

(p) "1999 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 1999, dated August 25, 1999;

(q) "1999 Resolution" means Resolution No. 2640 adopted on August 2, 1999 authorizing the issuance of the 1999 Bonds;

(r) "Parity Bonds" means bonds payable from the revenues of the System other than the Bonds but issued on a parity and equality with the Bonds pursuant to the restrictive provisions of Section 11 of this Resolution;

(s) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Municipality as part of the System as described in the preamble hereto;

(t) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date;

(u) "System" means the entire wastewater utility system of the Municipality specifically including that portion of the Project owned by the Municipality and including all property of every nature now or hereafter owned by the Municipality for the collection, transmission, treatment and disposal of domestic and industrial sewerage and waste, including all improvements and extensions thereto made by the Municipality while any of the Bonds and Parity Bonds remain outstanding, including all real and personal property of every nature comprising part of or used or useful in connection with such wastewater utility system and including all appurtenances, contracts, leases, franchises, and other intangibles;

(v) "2000 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2000, dated September 27, 2000;

(w) "2000 Resolution" means Resolution No. 3481 adopted on September 5, 2000 authorizing the issuance of the 2000 Bonds;

(x) "2002 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2002, dated April 10, 2002;

(y) "2002 Resolution" means Resolution No. 4544 adopted on March 19, 2002 authorizing the issuance of the 2002 Bonds;

(z) "2002B Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2002B, dated July 24, 2002;

(aa) "2002B Resolution" means Resolution No. 4718 adopted July 2, 2002 authorizing the issuance of the 2002B Bonds;

(bb) "2002C Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2002C, dated November 27, 2002;

(cc) "2002C Resolution" means Resolution No. 4964 adopted November 19, 2002 authorizing the issuance of the 2002C Bonds;

(dd) "2008 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2008, dated January 23, 2008;

(ee) "2008 Resolution" means Resolution No. 07-0580 adopted January 2, 2008 authorizing the issuance of the 2008 Bonds;

(ff) "2010 Bonds" means the Municipality's Wastewater Utility Revenue Bonds, Series 2010, dated March 24, 2010;

(gg) "2010 Resolution" means Resolution No. 10-1886 adopted March 2, 2010 authorizing the issuance of the 2010 Bonds;

(hh) "2018 Bonds" means the Municipality's Taxable Wastewater Utility Revenue Bonds, Series 2018, dated May 23, 2018; and

(ii) "2018 Resolution" means Resolution No. 0149-18 adopted May 15, 2018 authorizing the issuance of the 2018 Bonds.

Section 2. Authorization of the Bonds and the Financial Assistance Agreement. For the purpose of paying the cost of the Project (including legal, fiscal, engineering and other expenses), there shall be borrowed on the credit of the income and revenue of the System up to the sum of \$13,088,291; and fully registered revenue bonds of the Municipality are authorized to be issued in evidence thereof and sold to the State of Wisconsin Clean Water Fund Program in accordance with the terms and conditions of the Financial Assistance Agreement, which is incorporated herein by this reference and the Mayor and City Clerk of the Municipality are hereby authorized, by and on behalf of the Municipality, to execute the Financial Assistance Agreement.

Section 3. Terms of the Bonds. The Bonds shall be designated "Wastewater Utility Revenue Bonds, Series 2018B" (the "Bonds"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 1.870% per annum; shall be issued in denominations of \$0.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Assistance Agreement and in the Bond form attached hereto as Exhibit A as it is from time to time adjusted by the State of Wisconsin based upon the actual draws made by the Municipality. Interest on the Bonds shall be payable commencing on November 1, 2018 and semiannually thereafter on May 1 and November 1 of each year. The Bonds shall not be subject to redemption prior to maturity except as provided in the Financial Assistance Agreement.

The schedule of maturities of the Bonds is found to be such that the amount of annual debt service payments is reasonable in accordance with prudent municipal utility practices.

Section 4. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein

by this reference.

The Bonds shall be executed in the name of the Municipality by the manual signatures of the Mayor and City Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Bonds shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's Bond Registrar.

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Bond will be payable upon presentation and surrender of the Bond to the Bond Registrar. Payment of principal on the Bond (except the final maturity) and each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Municipality and mailed to such registered owner at his or its address as it appears on such registration books or at such other address may be furnished in writing by such registered owner to the Bond Registrar.

Section 5. Security for the Bonds. The Bonds, together with interest thereon, shall not constitute an indebtedness of the Municipality nor a charge against its general credit or taxing power. The Bonds, together with interest thereon, shall be payable only out of the Debt Service Fund hereinafter created and established, and shall be a valid claim of the registered owner or owners thereof only against such Debt Service Fund and the revenues of the System pledged to such fund, on a parity with the pledge granted to the holders of the CWF Bonds. Sufficient revenues are hereby pledged to said Debt Service Fund, and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the CWF Bonds, the Bonds and any Parity Bonds as the same becomes due.

Section 6. Funds and Accounts. In accordance with the Act, for the purpose of the application and proper allocation of the revenues of the System, and to secure the payment of the principal of and interest on the CWF Bonds, the Bonds and Parity Bonds, certain funds of the System were created and established by a resolution adopted April 20, 1993 and continued by the CWF Resolutions are hereby further continued and shall be used solely for the following respective purposes:

(a) Wastewater Utility Revenue Fund (the "Revenue Fund"), into which shall be deposited as received the Gross Earnings of the System, which money shall then be divided among the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund in the amounts and in the manner set forth in Section 7 hereof and used for the purposes described below.

(b) Wastewater Utility Operation and Maintenance Fund (the "Operation and Maintenance Fund"), which shall be used for the payment of Current Expenses.

(c) Wastewater Utility Special Redemption Fund (the "Debt Service Fund"), which shall be used for the payment of the principal of, premium, if any, and interest on the CWF Bonds, the Bonds and Parity Bonds as the same becomes due, and which may contain a Reserve Account established by a future resolution authorizing the issuance of Parity Bonds to secure such Parity Bonds.

(d) Wastewater Utility Depreciation Fund (the "Depreciation Fund"), which shall be used to provide a proper and adequate depreciation account for the System.

(e) Wastewater Utility Surplus Fund (the "Surplus Fund"), which shall first be used whenever necessary to pay principal of, premium, if any, or interest on the CWF Bonds, the Bonds and Parity

Bonds when the Debt Service Fund shall be insufficient for such purpose, and thereafter shall be disbursed as follows: (i) at any time, to remedy any deficiency in any of the Funds provided in this Section 6 hereof; and (ii) money thereafter remaining in the Surplus Fund at the end of any Fiscal Year may be transferred to any of the funds or accounts created herein or to reimburse the general fund of the Municipality for advances made by the Municipality to the System.

Section 7. Application of Revenues. After the delivery of the Bonds, the Gross Earnings of the System shall be deposited as collected in the Revenue Fund and shall be transferred monthly to the funds listed below in the following order of priority and in the manner set forth below:

- (a) to the Operation and Maintenance Fund, in an amount equal to the estimated Current Expenses for such month and for the following month (after giving effect to available amounts in said Fund from prior deposits);
- (b) to the Debt Service Fund, an amount equal to one-sixth (1/6) of the next installment of interest coming due on the CWF Bonds, the Bonds and any Parity Bonds then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the CWF Bonds, the Bonds and any Parity Bonds coming due during such Bond Year (after giving effect to available amounts in said Fund from accrued interest, any premium or any other source), and any amount required by a future resolution authorizing the issuance of Parity Bonds to fund a Reserve Account established therein;
- (c) to the Depreciation Fund, an amount determined by the Governing Body to be sufficient to provide a proper and adequate depreciation account for the System; and
- (d) to the Surplus Fund, any amount remaining in the Revenue Fund after the monthly transfers required above have been completed.

Transfers from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund shall be made monthly not later than the tenth day of each month, and such transfer shall be applicable to monies on deposit in the Revenue Fund as of the last day of the month preceding. Any other transfers and deposits to any fund required or permitted by subsection (a) through (d) of this Section, except transfers or deposits which are required to be made immediately or annually, shall be made on or before the tenth day of the month. Any transfer or deposit required to be made at the end of any Fiscal Year shall be made within sixty (60) days after the close of such Fiscal Year. If the tenth day of any month shall fall on a day other than a business day, such transfer or deposit shall be made on the next succeeding business day.

It is the express intent and determination of the Governing Body that the amounts transferred from the Revenue Fund and deposited in the Debt Service Fund shall be sufficient in any event to pay the interest on the CWF Bonds, the Bonds and any Parity Bonds as the same accrues and the principal thereof as the same matures, and to fund the Reserve Account as required in connection with future Parity Bonds.

Section 8. Deposits and Investments. The Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of and interest on the CWF Bonds, the Bonds and any Parity Bonds as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34, Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603 (1m), Wisconsin Statutes. The other funds herein created (except the Wastewater Utility CWFP

Project Fund) may be combined in a single account in a public depository selected in the manner set forth above and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

Section 9. Service to the Municipality. The reasonable cost and value of services rendered to the Municipality by the System by furnishing wastewater utility services for public purposes shall be charged against the Municipality and shall be paid in monthly installments as the service accrues, out of the current revenues of the Municipality collected or in the process of collection, exclusive of the revenues derived from the System; that is to say, out of the tax levy of the Municipality made by it to raise money to meet its necessary current expenses. The reasonable cost and value of such service to the Municipality in each year shall be equal to an amount which, together with other revenues of the System, will produce in each Fiscal Year Net Revenues equivalent to not less than the annual principal and interest requirements on the CWF Bonds, the Bonds, any Parity Bonds and any other obligations payable from the revenues of the System then outstanding, times the greater of (i) 110% or (ii) the highest debt service coverage ratio required with respect to any obligations payable from revenues of the System then outstanding. However, such payment out of the tax levy shall be subject to (a) approval of the Public Service Commission, or successors to its function, if applicable, (b) yearly appropriations therefor, and (c) applicable levy limitations, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the Municipality to make any such appropriation over and above the reasonable cost and value of the services rendered to the Municipality and its inhabitants or to make any subsequent payment over and above such reasonable cost and value.

Section 10. Operation of System; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Bonds, and each of them, that the Municipality will perform all of the obligations of the Municipality as set forth in the Financial Assistance Agreement.

Section 11. Additional Bonds. The Bonds are issued on a parity with the CWF Bonds as to the pledge of revenues of the System. No bonds or obligations payable out of the revenues of the System may be issued in such manner as to enjoy priority over the Bonds. Additional obligations may be issued if the lien and pledge is junior and subordinate to that of the Bonds. Parity Bonds may be issued only under the following circumstances:

(a) Additional Parity Bonds may be issued for the purpose of completing the Project and for the purpose of financing costs of the Project which are ineligible for payment under the State of Wisconsin Clean Water Fund Program. However, such additional Parity Bonds shall be in an aggregate amount not to exceed 20% of the face amount of the Bonds; or

(b) Additional Parity Bonds may also be issued if all of the following conditions are met:

(1) The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional bonds must have been in an amount at least equal to the maximum annual interest and principal requirements on all bonds outstanding payable from the revenues of the System, and on the bonds then to be issued, times the greater of (i) 1.10 or (ii) the highest debt service coverage ratio to be required with respect to the Additional Parity Bonds to be issued or any other obligations payable from the revenues of the System then outstanding. Should an increase in permanent rates and charges, including those made to the Municipality, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional bonds or during that part of the Fiscal Year of issuance prior to such issuance, then Net Revenues for purposes of such computation shall include such additional revenues as an independent certified public accountant, consulting

professional engineer or the Wisconsin Public Service Commission may certify would have accrued during the prior Fiscal Year had the new rates been in effect during that entire immediately prior Fiscal Year.

(2) The payments required to be made into the funds enumerated in Section 6 of this Resolution must have been made in full.

(3) The additional bonds must have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year.

(4) The proceeds of the additional bonds must be used only for the purpose of providing extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 12. Sale of Bonds. The sale of the Bonds to the State of Wisconsin Clean Water Fund Program for the purchase price of up to \$13,088,291 and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Assistance Agreement and the Bonds as hereinabove provided, necessary to conclude delivery of the Bonds to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Bonds shall be paid upon requisition therefor as provided in the Financial Assistance Agreement, and the officers of the Municipality are authorized to prepare and submit to the State requisitions and disbursement requests in anticipation of the execution of the Financial Assistance Agreement and the issuance of the Bonds.

Section 13. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be deposited by the Municipality into a special fund designated as "Wastewater Utility CWFP Project Fund." The Wastewater Utility CWFP Project Fund shall be used solely for the purpose of paying the costs of the Project as more fully described in the preamble hereof and in the Financial Assistance Agreement. Moneys in the Wastewater Utility CWFP Project Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 14. Amendment to Resolution. After the issuance of any of the Bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except: (a) the Municipality may, from time to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and (b) this Resolution may be amended, in any respect, with a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the Municipality; provided, however, that no amendment shall permit any change in the pledge of revenues derived from the System or the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bond, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.

Section 15. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The Municipality may discharge all Bonds due on any date by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S.



Government, or of a commission, board or other instrumentality of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the Municipality's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the Municipality's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, provided that notice of the redemption of all prepayable Bonds on such date has been duly given or provided for.

Section 16. Rebate Fund. Unless the Bonds are exempt from the rebate requirements of the Internal Revenue Code of 1986, as amended (the "Code"), the Municipality shall establish and maintain, so long as the Bonds and any Parity Bonds are outstanding, a separate account to be known as the "Rebate Fund." The sole purpose of the Rebate Fund is to provide for the payment of any rebate liability with respect to the Bonds under the relevant provisions of the Code and the Treasury Regulations promulgated thereunder (the "Regulations"). The Rebate Fund shall be maintained by the Municipality until all required rebate payments with respect to the Bonds have been made in accordance with the relevant provisions of the Code and the Regulations.

The Municipality hereby covenants and agrees that it shall pay to the United States from the Rebate Fund, at the times and in the amounts and manner required by the Code and the Regulations, the portion of the "rebate amount" (as defined in Section 1.148-3(b) of the Regulations) that is due as of each "computation date" (within the meaning of Section 1.148-3(e) of the Regulations). As of the date of this Resolution, the provisions of the Regulations specifying the required amounts of rebate installment payments and the time and manner of such payments are contained in Sections 1.148-3 (f) and (g) of the Regulations, respectively. Amounts held in the Rebate Fund and the investment income therefrom are not pledged as security for the Bonds or any Parity Bonds and may only be used for the payment of any rebate liability with respect to the Bonds.

The Municipality may engage the services of accountants, attorneys or other consultants necessary to assist it in determining the rebate payments, if any, owed to the United States with respect to the Bonds. The Municipality shall maintain or cause to be maintained records of determinations of rebate liability with respect to the Bonds for each computation date until six (6) years after the retirement of the last of the Bonds. The Municipality shall make such records available to the State of Wisconsin upon reasonable request therefor.

Section 17. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made, except as provided in Section 14, until all of the Bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the Municipality, the Governing Body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the Municipality, its Governing Body and any other authorized body, to fix and collect rates and charges fully adequate to carry out all of the provisions and agreements contained in this Resolution.

Section 18. Continuing Disclosure. The officers of the Municipality are hereby authorized and directed, if requested by the State of Wisconsin, to provide to the State of Wisconsin Clean Water Fund Program and to such other persons or entities as directed by the State of Wisconsin such

ongoing disclosure regarding the Municipality's financial condition and other matters, at such times and in such manner as the Clean Water Fund Program may require, in order that securities issued by the Municipality and the State of Wisconsin satisfy rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended and as it may be amended from time to time, imposed on brokers and dealers of municipal securities before the brokers and dealers may buy, sell, or recommend the purchase of such securities.

Section 19. Conflicting Resolutions. All ordinances, resolutions (other than the CWF Resolutions), or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage. In case of any conflict between this Resolution and the CWF Resolutions, the CWF Resolutions shall control as long as any of the respective CWF Bonds are outstanding.

Fiscal Note: The FAA will make available up to \$13,788,291 with up to \$700,000.00 in principal forgiveness for the Lift Station No. 2 Storage Project.