

**CITY OF WASILLA
RESOLUTION SERIAL NO. 09-14**

A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE MAYOR TO APPLY FOR AND EXECUTE A LOAN AGREEMENT WITH THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 IN THE AMOUNT OF \$575,000 FOR THE GARDEN TERRACE WATER MAIN EXTENSION ON ABBY BOULEVARD.

WHEREAS, The City of Wasilla seeks to obtain the necessary financial assistance to construct water system improvements in Garden Terrace Subdivision on Abby Blvd; and

WHEREAS, the State of Alaska, Department of Environmental Conservation is able to offer funding through the Alaska Drinking Water Fund; and

WHEREAS, the City of Wasilla wishes to apply for a loan from the Alaska Drinking Water Fund.

NOW, THEREFORE, BE IT RESOLVED, by the Wasilla City Council that the Mayor is authorized to apply to the Department for a loan from the Alaska Drinking Water Fund for water system improvements. The Mayor is also authorized to execute any and all documents that may be required by the Department to reflect the indebtedness, the terms of its repayment, and any security thereof, including but not limited to an agreement for the loan and a promissory note.

ADOPTED by the Wasilla City Council on June 8, 2009.


VERNE E. RUPRIGHT, Mayor

ATTEST:


KRISTIE L. SMITHERS, MMC, City Clerk

[SEAL]

VOTE: Cox, Hall, Harris, Holler, Larson and Woodruff in favor.



**CITY OF WASILLA
LEGISLATION STAFF REPORT**

RESOLUTION SERIAL NO. 09-14: A RESOLUTION OF THE WASILLA CITY COUNCIL AUTHORIZING THE MAYOR TO APPLY FOR AND EXECUTE A LOAN AGREEMENT WITH THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 IN THE AMOUNT OF \$575,000 FOR THE GARDEN TERRACE WATER MAIN EXTENSION ON ABBY BLVD.

Agenda of: June 8, 2009

Date: May 26, 2009

Originator: Public Works Director

Route to:	Department	Signature/Date
	Chief of Police	
	Recreational and Cultural Services Manager	
X	Director of Public Works	<i>[Signature]</i> 5/28/09
X	Director of Finance	<i>[Signature]</i> 5-28-09
X	Deputy Administrator	<i>[Signature]</i>
X	City Clerk	<i>[Signature]</i>

REVIEWED BY MAYOR VERNE E. RUPRIGHT: *[Signature]*

FISCAL IMPACT: yes \$575,000 or no Funds Available yes no

Account name/number: Garden Terrace Abby Blvd/320-4369-436.45-53

Attachments: Draft Loan Agreement

SUMMARY STATEMENT: The City of Wasilla is able to apply for funding through the American Recovery and Reinvestment Act of 2009 with the Alaska Department of Environmental Conservation by means of a Drinking Water Fund Loan. The terms of the loan will include a 0.5 percent interest rate and a provision for 90 percent forgiveness as a funding subsidy. This project will replace approximately 975 feet of 6-inch water main in Abby Blvd. with a 12-inch water main and new fire hydrants.

STAFF RECOMMENDATION: Approve the adoption of Resolution Serial No. 09-14 authorizing the Mayor to apply for and execute a loan agreement with the Alaska Department of Environmental Conservation in the amount of \$575,000 for the Garden Terrace Water Main Extension on Abby Blvd.

ALASKA DRINKING WATER FUND AGREEMENT

ADEC LOAN NUMBER XXXXXX



Garden Terrace Water Main Extension on Abby Blvd.

THIS AGREEMENT is entered into as of (DATE) by the Alaska Department of Environmental Conservation (the Department) and the City of Wasilla (the Borrower), acting pursuant to Resolution Serial No. 09-14 approved by the Wasilla City Council for a loan amount of \$575,000 with a loan term of one years.

SECTION I - DEFINITIONS

Section 1.1. Except where the context clearly indicates otherwise, terms used in this Agreement will have the meaning ascribed to them in this section.

(a) “Approved Application” means the application submitted to the Department on (DATE) together with all attachments and supporting documentation, as approved by the Department and the Borrower.

(b) “ARRA” means the American Recovery & Reinvestment Act of 2009” in which economic stimulus funds were awarded to the Department for funding eligible projects under the Alaska Drinking Water Fund Program.

(c) “Finance Charge Rate” means 0.5 percent per annum.

(d) “Funding Subsidy” means a principle forgiveness amount awarded under this agreement- 90 percent.

(e) “Contract period” means the time period commencing on the date this agreement is signed by the Borrower and terminating on the date the Borrower repays the loan in full.

(f) “Default” means the Borrower has failed to make a loan repayment within 90 days of the due date, as determined by the repayment schedule prepared by the Department immediately following initiation of operation of the facility.

(g) "Eligible Project Costs" include the following costs disbursed from the Alaska Drinking Water Fund, estimated to not exceed \$XXXXXX; engineering for the project facility; surveys, planning, estimates, and preliminary design; financial and environmental investigations; laboratory testing, legal expenses; and any other necessary miscellaneous expenditures, minus the amount of any grant applicable to foregoing costs.

(h) "Green Project" means a project that meets criteria defined under the ARRA Act and through EPA and Department guidance that would qualify under one of the following four categories: stormwater infrastructure, energy efficiency, water efficiency, and innovative environmental project.

(i) "Participation Payment" means the amount per year necessary to amortize the loan.

(j) "Project Facility" means the facility to be designed pursuant to this Agreement as described generally in the Approved Application dated (DATE) and described in detail in the project's application. The project will provide engineering design and materials for upgrade/replacement of wastewater collection components, including the elimination of haul system/honey-bucket use.

SECTION II - RIGHTS OF ACCESS

Section 2.1. The Department has the right at all reasonable times to enter the project site, for the purpose of obtaining a status of the work.

SECTION III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITY, LOAN DISBURSEMENT, AND PAYMENT OF COSTS

Section 3.1. With the exception of land easements, all real estate and personal property constituting the Project Facility and the project must belong to the Borrower.

Section 3.2. In connection with the construction of the project facility, the Borrower agrees that:

(a) The Borrower will not begin construction of the Project Facility until the Department has reviewed and approved the plans and specifications for the project. In its approvals, the Department may specify changes or conditions to the plans and specifications. The Department must approve any subsequent changes to, or deviations from, approved plans.

(b) The Borrower will ensure that contract wages paid for the construction of the Project Facility conform to the prevailing wage rates established for the locality by the Alaska Department of Labor under AS 36.05.010, and with any applicable federal standards under 42 U.S.C. 300j-9(e).

(c) Any construction contract estimated to equal or exceed \$50,000 will be awarded through a competitive bidding process and any construction contract estimated to be less than \$50,000 may be negotiated if the Department approves the solicitation and negotiation procedures.

(d) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment may be readily itemized as to allowable project costs and noneligible costs.

(e) Any change in a construction contract that will alter the contract specifications, time, price or will substantially modify the proposed treatment process must be submitted to the Department for approval if the Borrower wishes to have the modifications considered loan eligible.

(f) The construction of the Project Facility will conform to applicable federal, state, and local laws, ordinances, and regulations.

(g) The Borrower will proceed expeditiously and complete the Project Facility in accordance with the Approved Application, project schedule, surveys, plans, profiles, cross-sections, specifications, and amendments.

Section 3.3. The Borrower agrees to administer this loan in a non-discriminatory manner. No person shall be discriminated against based on race, religion, color, national origin, gender or disability.

Section 3.4. When applicable, the Borrower will comply with Title I- Employment of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title I of that Act, shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Section 3.5 When applicable, the Borrower will comply with Title II-Public Services of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title II of the Act, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or

be subjected to discrimination by any such entity.

Section 3.6 When applicable, the Borrower will comply with Title II, Part 35, Section 35.151 of the Act 'New Construction and Alterations' (a) Design and construction: Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992. (b) Alteration: Each facility or part of a facility altered by, on behalf of or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. (c) Accessibility standards: Design, construction or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.5(1)(j) of ADAAG shall not apply.

Section 3.7 When applicable, the Borrower will comply with Title III, Part 36, Section 36.401 of the Act "New Construction." Except as provided in paragraph (b) and (c) of the Act, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.

Section 3.8 When applicable, the Borrower will comply with Title III, Part 36, Section 36.402 of the Act "Alterations" (a) General: Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. (b) Alteration: An alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

Section 3.9. The Borrower shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." The Borrower is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The Borrower is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The Borrower acknowledges that failing to disclose the information required under 40 CFR

32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Section 3.10. The Borrower will comply with the disadvantage business requirements of the State Revolving Loan Fund program to the extent required by the federal law, and will require its contractors to also meet these requirements to the extent required by federal law.

Section 3.11. Upon completion of the project, the Borrower will provide a statement to the Department of the project final costs by category of expenditure, including but not limited to costs for administration and design.

SECTION IV - PARTICIPATION PAYMENTS BY THE BORROWER

Section 4.1. This loan is made to the Borrower from the Alaska Drinking Water Fund for the maximum amount of \$XXXXXX. Of this total amount, 90% of the amount or \$XXXXX, whichever is less, is offered to the Borrower as a funding subsidy (principle forgiveness) [if applicable - , and an additional amount of \$XXXXX or XX% of the total amount, whichever is less, is offered to the Borrower as a funding subsidy for an eligible "Green" project component under ARRA.] All remaining unsubsidized funds will be repaid as provided in the following sections.

Section 4.2. The Borrower agrees to repay the principal amount and the finance charge rate on all cash draws made to the Borrower according to the repayment schedule, which will be prepared by the Department and confirmed by the Borrower following initiation of operation of the facility. The repayment schedule for the actual amount of loan payments made to the Borrower will provide that:

(a) the Borrower will pay a finance charge of XX percent on each disbursement. Accrual of interest will begin one year after the date of the first disbursement to the Borrower.

(b) the loan amount will be paid back within XX years following initiation of operation of the facility. Repayment of the loan will be made with equal annual principle payments plus the finance charge or equal annual total payments including the finance charge. Other repayment methods may be negotiated with the Department.

(c) the first loan repayment will be due one year following substantial completion and initiation of operation of the facility.

Section 4.3. The Borrower assures the Department that the Borrower has not pledged revenues for the repayment of its loan that have been previously pledged or encumbered. The pledged revenues for repayment of the loan and each separate source of revenue are specifically identified and described in the Borrower's submitted application.

Section 4.4. In the event that any of the revenues pledged by the Borrower for the repayment of its loan are encumbered by a lien of any prior outstanding debt, the Borrower will furnish the Department with legal assurance that the excess of such prior encumbered revenues are legally available for pledging to the Alaska Drinking Water Fund.

Section 4.5. The Borrower agrees that if pledged revenues are insufficient to meet any loan payment to the Department when due, the Borrower will pay the deficiency in its loan payment from any legally available funds accruing to or in the possession of the Borrower. Repayment of the loan, which is the subject of this loan agreement, shall not be a direct and general obligation of the Borrower.

Section 4.6. If a payment is received by the Department more than 30 days after it is due, the Borrower agrees to pay a late charge of five percent of the payment. Interest on the unpaid balance will continue to accrue at the contract interest rate and must be paid in addition to the late charge. Payments in arrears over 90 days, will be referred to the Department of Law for collection.

Section 4.7. The Borrower agrees that it will separately account for all monies received from the Alaska Drinking Water Fund and will maintain project accounts in accordance with generally accepted accounting principles.

Section 4.8. If, prior to completion of the contract period, the Project Facility is damaged or destroyed, the Borrower is liable to the Department for all amounts due under this Agreement.

Section 4.9. The provisions of AS 37.15.575 relating to state aid interception apply to the loan made under this agreement.

SECTION V - MAINTENANCE, OPERATION, INSURANCE and AUDIT

Section 5.1. If applicable, the Borrower agrees to prepare a manual for operation and maintenance of the facility which is approved by the Department.

Section 5.2. The Borrower must ensure that a Department approved ordinance and a user charge system are adopted prior to initiation of operation of the facility.

Section 5.3. The Borrower shall initiate operation of the Project Facility immediately upon completion of construction and may not discontinue operation of the Project Facility without Departmental approval. Within one year after the initiation of operation, the Borrower must certify to the Department that the facility is performing up to design standards. The Borrower must ensure that sufficient qualified operating personnel certified by the State of Alaska will be retained to operate the Project Facility. Nothing contained in this Agreement shall be construed as an obligation or pledge of the Borrower to appropriate or expend general funds and general revenues of the Borrower to operate or maintain the Project Facility.

Section 5.4. The Borrower agrees to insure the Project Facility against loss or damage in an amount at least equal to the loan amount specified in Section 4.1.

Section 5.5. An insurance policy issued pursuant to Section 5.4 must be written or endorsed to make losses payable to the Department and the Borrower as their interests may appear. The interests of the Department are limited to the unpaid principal balance of the loan and any finance charge and penalties accrued as of the date such loan may be paid in full as a result of any insurance payoff, following destruction or damage to the facility.

Section 5.6. In the event the Borrower fails to maintain the full insurance coverage required by this Agreement, the Department may take out the required policies of insurance and pay the premiums. All amounts so advanced by the Department will become an additional obligation of the Borrower to the Department.

Section 5.7. The Borrower agrees to submit a financial report for the Project Facility for Departmental approval within one year after initiation of operation of the facility. A project audit, performed by the Department, will cover the entire multi-year project.

Section 5.8. Financial assistance received under this loan agreement is considered federal assistance and is to be included when determining the threshold amount for a Federal Single Audit. However, financial assistance received under this loan agreement is not subject to State Single Audit.

Section 5.9. The provisions of AS 37.15.575 relating to state aid interception apply to the loan made under this agreement.

SECTION VI - MISCELLANEOUS PROVISIONS

Section 6.1. Any disbursement made under this Agreement by the department shall be delivered by electronic transfer, registered or certified mail, courier service or delivered personally. Any repayment made under this Agreement by the loan recipient shall be delivered by registered or certified mail, or delivered personally, and,

(a) if addressed to the Department, will be sent or delivered personally to:

Alaska Department of Environmental Conservation
Division of Water - Alaska Drinking Water Fund
410 Willoughby Avenue, Suite 303
P.O. Box 111800
Juneau, AK 99811-1800

(b) if addressed to the Borrower, will be sent to or delivered personally to:

[BORROWER NAME]
P.O. Box 00
[NAME], AK 99000

Section 6.2. Departmental approvals, required by this Agreement will not be unreasonably withheld.

Section 6.3. This Agreement is made subject to and conditional upon the availability of funds.

Section 6.4. This Agreement is effective as of the date set forth above and continues in full force and effect until the final day of the Contract Period.

Section 6.5. This Agreement is binding upon the parties specified below, and to any person, office, or board succeeding either of the parties. This Agreement may not be assigned by the Borrower without written consent of the Department.

Section 6.6. The Department may cancel all or any part of this agreement if:

(a) Any representation or other statement made by the Borrower to the Department in connection with its application for a loan from the Alaska Drinking Water Fund is incorrect or incomplete in any material respect;

(b) The Borrower has violated commitments made by it in its Approved Application and supporting documents, has not adhered to the regulations of the Alaska Drinking Water Fund (18 AAC 76), has violated any of the terms of this Loan Agreement; or

(c) The financial position of the Borrower has, in the opinion of the Department, suffered a materially adverse change.

Section 6.7. No portion of this loan amount may be used for lobbying or propaganda purposes as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

SECTION VII - SPECIAL PROVISIONS

Section 7.1 This agreement along with all other applicable conditions under the agreement, is conditioned upon meeting the following dates under requirements of ARRA and the Alaska Drinking Water Fund State Fiscal Year 2010 Intended Use Plan. Any failure to meet these dates will null and void this agreement:

(a) If this agreement is made to fund a project within 120 days of enactment of ARRA (February 17, 2009), the community in receipt of ARRA project funds must provide documentation to the Department prior to the date of June 17, 2009, that substantiates start of project construction.

(b) If this agreement is made to fund a project after 120 days but within one year of enactment of ARRA or by February 17, 2010, the community in receipt of ARRA project funds, must provide documentation to the Department no less than 30 days prior to this date (or January 18, 2010), that substantiates award of a construction contract on the project.

(c) If a project is solely for equipment/material procurement under either applicable section of (a) or (b) above, documentation of an award must be provided to the Department prior to any final date.

Section 7.2 The Borrower shall comply with all applicable provisions of ARRA or "The Act" including, but not limited to, the following sections which state in part:

(a) Buy American: None of the funds made available to the borrower by the implementation of ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Several exclusions to this requirement are written in The Act

to include, but not limited to, insufficient supply or substandard quality for said project, exorbitant price (increase overall project cost by more than 25%), or if the inclusion of such requirements are inconsistent with public interest as stated in Title XVI Sec. 1605 of The Act. In addition, this includes any other forthcoming policy implementation that would offer additional exclusions of this provision under the Act; however, this exclusion would need to be in place prior to any disbursement to a community for affected project work.

(b) Wage Rate Requirements: All laborers and mechanics employed by contractors and subcontractors on the project set forward by this loan agreement shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. The full requirements of this provision are listed in Title XVI Sec 1606 of The Act.

(c) Employ American Workers: Notwithstanding any other provision of law, it shall be unlawful for the borrower to hire any nonimmigrant described in section 101(a)(15)(h)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(h)(i)(b)) unless the borrower is in compliance with the requirements for an H-1B dependent employer (as defined in section 212(n)(3) of such Act (8 U.S.C 1182(n)(3))), except that the second sentence of section 2112(n)(1)(E)(ii) of such Act shall not apply. Details of this provision are found in Title XVI Sec 1611 of The Act.

(d) Reporting Accountability: No later than the end of each calendar quarter, the borrower shall submit a report to the Department that contains:

- (1) The total amount of funds received from the Department for the project
- (2) A detailed list of all projects or activities for which the loan was obligated including-
 - (A) The name and location of the project or activity
 - (B) A detailed description of the project or activity including a rationale of expected benefits upon project conclusion
 - (C) An evaluation of the completion status of the project or activity with a schedule of variances and expected variances to the budget
 - (D) A brief description and estimate on the number of jobs created, the number of jobs retained, and an estimate of the number of future jobs to be created by the project or activity
 - (i) "Jobs or positions created" mean an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of Recovery Act funding.
 - "Jobs or positions retained" mean an estimate of those

previously existing filled positions that are retained as a result of Recovery Act funding.

- (ii) At minimum, an estimate shall include any new positions created and any existing filled positions that were retained to support or carry out Recovery Act projects or activities managed directly by the recipient, and if known, by the borrower. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the recipient.

(E) Explain how the infrastructure investment will contribute to one or more purposes of the Recovery Act:

- (i) To preserve and create jobs and promote economic recovery.
- (ii) To assist those most impacted by the recession.
- (iii) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.
- (iv) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
- (v) To stabilize local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

(3) The borrower must provide or obtain a 9 digit Data Universal Numbering System (DUNS) number or Central Contractor Registration plus 4 extended DUNS number.

(4) Identify the five most highly compensated local officials to receive ARRA funding if: (the names and total compensation)

(A) 80 percent or more of its annual gross revenues in Federal awards; and

(B) \$ 25,000,000 or more in annual gross revenues from Federal awards; and

(C) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USCS § 6104].

(e) The Borrower shall also provide data regarding the project that the Lender may reasonably request in its role as grantee under the Act including any other associated guidance related to the Act for which the Lender reasonably believes will provide information sought by the Act or in conformity with it.

(f) Any failure to comply with these special conditions shall constitute an event of default under the Loan Agreement and to all remedies allowed by law or in accord with the terms of the Loan Agreement.

DEFAULT

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: _____
Lynn J. Tomich Kent, Director
Division of Water

**ACKNOWLEDGEMENT
STATE OF ALASKA
Third Judicial District**

The foregoing instrument was acknowledged before me this _____ day of
_____, 20XX

Notary Public, State of Alaska
My commission expires: _____

[NAME OF BORROWER]

By: _____

**ACKNOWLEDGEMENT
STATE OF ALASKA
Third Judicial District**

The foregoing instrument was acknowledged before me this _____ day of
_____, 20XX

Notary Public, State of Alaska
My commission expires: _____