

RESOLUTION NO. 9355

A RESOLUTION OF CITY OF GREAT FALLS, MONTANA,  
AUTHORIZING THE ENTERING INTO, EXECUTION AND  
DELIVERY OF A COMMITMENT AGREEMENT WITH THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
REGARDING THE SALE AND DELIVERY OF THE CITY'S  
\$4,400,000 STORM DRAINAGE SYSTEM REVENUE BOND  
(DNRC REVOLVING LOAN PROGRAM), SERIES 2004

WHEREAS, pursuant to Montana Code Annotated Title 7, Chapter 7, Parts 44, the City Commission (the "Commission") of City of Great Falls, Montana (the "City") is authorized to issue its revenue bonds to pay the costs of designing, constructing and installing certain improvements to the City's storm drainage system (the "System"); and

WHEREAS, the Department of Natural Resources and Conservation (the "DNRC") has provided to the City a form of Commitment Agreement between the City and the DNRC, a copy of which is attached as Exhibit A (the "Commitment Agreement") and pursuant to which the DNRC will loan the City \$4,400,000 to pay the costs of financing certain improvements to the System as described on Exhibit A to the Commitment Agreement (the "Project") and the City will evidence its obligation for the Loan by the issuance of its Storm Drainage System Revenue Bond (DNRC Revolving Loan Program) in the same amount (the "Bond"); and

WHEREAS, the City has reviewed the Commitment Agreement; and

WHEREAS, it is the judgment and determination of the Commission that it is in the best interest of the City to approve and enter into a Commitment Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City as follows:

1. Approval of Commitment Agreement. The Commission of the City hereby approves the terms and provisions of the Commitment Agreement and hereby authorizes the Mayor and City Clerk of the City to execute and deliver the Commitment Agreement to the DNRC.

2. Authority to Proceed. The Mayor and City Clerk of the City are hereby authorized to take all actions necessary and desirable to proceed with the issuance of the Bond to the DNRC in accordance with the provisions of the Commitment Agreement and other applicable provisions of Montana law, subject to the final bond resolution being presented to the Commission for approval before the Bond is issued.

PASSED by the City Commission of the City of Great Falls, Montana, on this 6th day of January, 2004.

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Mayor

Attest:

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City Clerk

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of City of Great Falls, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "A RESOLUTION OF CITY OF GREAT FALLS, MONTANA, AUTHORIZING THE ENTERING INTO, EXECUTION AND DELIVERY OF A COMMITMENT AGREEMENT WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION REGARDING THE SALE AND DELIVERY OF THE CITY'S \$4,400,000 STORM DRAINAGE SYSTEM REVENUE BOND (DNRC REVOLVING LOAN PROGRAM), SERIES 2004" (the "Resolution"), is on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Commission of the City at a regular meeting on January 6, 2004 and that the meeting was duly held by the City Commission and was attended throughout by a quorum, pursuant to call and notice of such meetings given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution, the following  
Commissioners voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

voted against the same: \_\_\_\_\_;  
abstained from voting thereon: \_\_\_\_\_;  
or were absent: \_\_\_\_\_.

WITNESS my hand and seal officially this 6th day of January, 2004.

\_\_\_\_\_  
City Clerk

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COMMITMENT AGREEMENT

**Revenue Bond**

Water Pollution Control State  
Revolving Fund Program

Between

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA**

And

**City of Great Falls**

Upgrade Wastewater Treatment System  
SRF #C-305059-01

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**Estimated Loan Amount .....\$4,400,000**

**COMMITMENT AGREEMENT**  
**Water Pollution Control State**  
**Revolving Fund Program**

This Commitment Agreement (as amended or supplemented in accordance with the terms hereof, the "Agreement") is entered into this \_\_\_\_\_ (day) of \_\_\_\_\_ (mo), \_\_\_\_\_ (yr), between the Department of Natural Resources and Conservation of the State of Montana (the "Department") and the **City of Great Falls** (the "Borrower").

In consideration of the mutual covenants, representations and agreements contained herein, the Department and the Borrower hereby agree as follows:

Section 1. Definitions, Recitals and Other Provisions of General Application.

1.1. Definitions. For purposes of this Agreement, capitalized terms herein shall have the respective meanings assigned them in this paragraph 1.1 and in the initial paragraph hereof, unless the context hereof clearly otherwise requires:

"Act" shall mean collectively Montana Code Annotated, Title 17, Chapter 5, Part 8, as amended, and Title 75, Chapter 5, Part 11, as amended.

"Administrative Expense Surcharge" shall mean a surcharge on the Loan charged by the Department to the Borrower equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of interest on the Loan are due.

"Administrative Fee" shall mean a fee equal to fifty-seven and one-half hundredths of one percent (0.575%) of the initial Committed Amount, to be retained by the Department from the proceeds of the Loan.

"Board" shall mean the Board of Examiners of the State of Montana, or any successor to its function as issuer of the State's Bonds.

"Bond" shall mean the **\$4,400,000** Storm Drain Revenue Bond (DNRC Revolving Loan Program), Series **2004**, issued to the Department to evidence the Loan.

"Bond Resolution" shall mean the resolution, in form and substance satisfactory to the Department, adopted by the Governing Body, authorizing the sale of the Bond to the Department and prescribing the terms thereof and establishing the security therefor.

"Borrower Act" shall mean Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended.

"Clean Water Act" shall mean the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commitment Agreement Resolution" shall mean a resolution, in form and substance satisfactory to the Department, duly adopted by the Governing Body authorizing the Borrower to execute and deliver this Agreement.

"Committed Amount" shall mean the dollar amount shown on the cover hereof.

"Costs of Issuance" shall mean all items of expense directly or indirectly payable by or reimbursable to the Department and related to the authorization, sale and issuance of State Bonds the proceeds of which are used to fund the Loan, including but not limited to the Board's fees, costs of preparation and reproduction of documents, initial fees and charges of the Trustee, underwriters' discount, legal fees and charges, fees and disbursements of consultants and professionals, fees and charges for preparation and execution of such State Bonds, rating agency fees and any other cost, charge or fee in connection with the original issuance of such State Bonds.

"Department" shall mean the Department of Natural Resources and Conservation of the State of Montana, or any successors to its functions under the Program.

"DEQ" shall mean the Department Environmental Quality of the State of Montana, or any successors to its functions under the Program.

"EPA" shall mean the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Clean Water Act.

"Governing Body" shall mean the council, board or other body that establishes legislative policy for the Borrower.

"Indenture" shall mean the Indenture of Trust, to be entered into between the Board and a corporate trustee, as such may be amended or supplemented from time to time in accordance with the provisions thereof, and pursuant to which the State Bonds are to be issued.

"Loan" shall mean the loan made to the Borrower by the Department pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the Project Costs.

"Loan Date" shall mean **February 20, 2004**.

"Loan Loss Reserve Surcharge" shall mean a fee equal to one percent (1.00%) per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of principal and interest on the Loan are payable.

"Origination Fee" 1% of the committed amount to be used to pay the Borrower's Pro Rata Share of the Costs of Issuance of the State Bonds.

"Program" shall mean the Water Pollution Control State Revolving Fund Program established under the Act, pursuant to which the Department will issue and sell the State Bonds and use the proceeds thereof and certain other funds to make the Loan to the Borrower.

"Project" shall mean the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the Loan, and which is more fully described on Exhibit A hereto.

"Project Costs" shall mean the costs of the Project and the costs relating to the Loan that may be paid from proceeds of the Bond under the Borrower Act and that qualify as eligible costs under the Program, including, without limitation, costs of design, engineering, construction and equipping the Project, contingencies, interest payable on the Loan during construction, deposits to a reserve or revolving fund to secure the Bond, the Origination Fee and the Administrative Fee payable under the Program. Exhibit B contains a list of known Project Costs in amounts estimated as of the date of this Agreement.

"Rules" shall mean the rules promulgated by the Board of Natural Resources and Conservation and the Board of Health and Environmental Sciences implementing the Program.

"State Bonds" shall mean the General Obligation Bonds (Water Pollution Control State Revolving Fund Program) issued or to be issued by the Board from time to time under the Act and the Indenture.

"System" shall mean the existing wastewater system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including the Project.

1.2. References and Construction. All references in this instrument to designated "Sections", other subdivisions are to the designated Sections, and other subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context clearly indicate otherwise. This Agreement shall be construed in accordance with the laws of the State of Montana.

1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: A description of the Project.

Exhibit B: A listing of all known components of Project Costs and the estimated amounts thereof as of the date of this Agreement.

Exhibit C: A summary of certain provisions of the Bond Resolution, which does not purport to be complete or definitive.

Exhibit D: A certified copy of any resolution or agreement that secures any outstanding indebtedness payable in whole or in part from revenues of the System.

Section 2. Representations by the Department. The Department makes the following representations as the basis for its covenants herein:

2.1 The Board is authorized by the Act to issue and sell the State Bonds and apply the proceeds thereof to make loans or refinance loans to local government units and to purchase bonds or notes issued by local government units. Pursuant to this authorization, the Board, the Department and the DEQ have created and implemented the Program.

2.2. The Department has received an application from the Borrower to participate in the Program for the purpose of obtaining the Loan in the maximum principal amount equal to the Committed Amount to finance all or a portion of the Project Costs.

2.3. The Board will provide funds for the Program by issuing and selling the State Bonds from time to time in amounts sufficient, with other available funds, including EPA capitalization grant funds, to fund loans to the participants in the Program, including the Borrower. Based on the application of the Borrower, the Committed Amount of the Loan is estimated to be sufficient to pay (i) **\$4,400,000** of costs of the construction of the Project, (ii) **\$0** of interest on the Loan during construction, (iii) The borrower will fund from it's own available funds the reserve account that will secure the Bond, the Origination Fee, and the Administrative Fee. The average annual interest rate on the Loan, inclusive of the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge (but not taking into account the Origination Fee or the Administrative Fee), was based on an estimated interest rate of **three and three quarter percent 3.75%** per annum. This interest rate reflects an estimated interest cost based on market conditions evaluated during preparation of the agreement. A maximum interest rate of **four and one half percent 4.5%** is established as a ceiling for purposes of this commitment agreement, not to be exceeded without written authorization of the borrower and the Department.

2.4. The covenants and collateral, if any, securing the Bond (exclusive of the revenues of the System) shall be contained in the Bond Resolution and such other security instruments, if any, as the Department shall require. Forms of such documents (and the forms of other documents that are required to be delivered by the Borrower to the Department with the Bond under paragraph 4.3. hereof) will be provided the Borrower and its bond counsel by the Department. A summary of certain provisions of the Bond Resolution, which outlines the terms of the Loan and covenants securing the Loan, and an identification of the collateral, if any, in addition to the revenues of the System, required to secure the Loan are contained in Exhibit C hereto. The summary does not purport to be complete or definitive, and the actual provisions of the Bond Resolution embodying the requirement outlined in Exhibit C are available from the Department upon written request.

Section 3. Representations by the Borrower. The Borrower makes the following representations as the basis for its covenants herein:

3.1. The Borrower is duly organized and validly existing as a political subdivision of the State of Montana, has power to enter into this Agreement and, by proper action of its Governing Body, has authorized the execution and delivery of this Agreement.

3.2. The Governing Body has duly authorized the undertaking of the Project. The Borrower has obtained or made all permits, findings and approvals, required to the date hereof by any governmental agency or authority, including the EPA, for the Project, and for any necessary wastewater rate increase required for the issuance of the Bond or to pay principal thereof or interest thereon. Construction of the Project has complied and will comply with all federal and state regulations, including, without limitation, DEQ and EPA regulations and standards. The Project and the proposed Loan meet the standards of eligibility of the Program, as expressed in the Act and the Rules.

3.3. The undertaking of the Project and the issuance of the Bond in a principal amount equal to the Committed Amount to finance Project Costs and to evidence the Loan is authorized under the Borrower Act and the issuance of the Bond in a principal amount equal to the Committed Amount will not (i) cause the indebtedness of the Borrower to exceed any constitutional or statutory limitation or (ii) violate any term, condition or provision of or constitute a default under any resolution, contract or agreement to which the Borrower is a party or by which the Borrower is bound.

3.4. The execution, delivery and performance of this Agreement have been duly authorized by the Borrower, as evidenced by a certified copy of the Commitment Agreement Resolution, adopted by the Governing Body and delivered to the Department with this Agreement.

3.5. Construction of the Project began **July 1, 2003** and is to be completed by **September 30, 2005**.



3.6. The application of the Borrower to participate in the Program which has been furnished to the Department is, as of the date hereof, accurate and complete. Any financial information furnished as part of the application is true and complete as of the dates and for the periods indicated, and there has been no material adverse change in the financial position of the Borrower or the System since the last such date or period nor has there been any material change in the character or the number of users of the System, which has not been disclosed to the Department in writing.

3.7. Attached as Exhibit D is a copy, certified as to authenticity by the recording officer of the Borrower, of all resolutions or agreements that secure any outstanding indebtedness payable in whole or in part from revenues of the System.

#### Section 4. Covenants of the Borrower and the Department.

4.1. The Borrower agrees to undertake construction of the Project and to comply with all pertinent provisions of applicable federal, state and local law, including DEQ and EPA regulations and standards, relating to the Project.

4.2. The Department agrees to use its best efforts to cause the Board to sell and issue the State Bonds, or apply other funds under the Program if legally available therefor, to provide funds to make the Loan to the Borrower on or before the Loan Date or such later date as is permitted under this Section 4. The Borrower acknowledges and agrees that the Board has the right, in its sole and absolute discretion, to fix the terms and conditions of the State Bonds, to issue other State Bonds or apply other funds to fund the Loan, as it may determine is in the best interests of the Program. If the Department is unable to obtain funds to make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Borrower hereunder.

If the Department has obtained funds to make the Loan, it shall notify the Borrower in writing of the availability of the Loan. The notice shall state whether the Loan will be funded, in whole or in part, with proceeds of the State Bonds and indicate the series designation thereof, if other than the State Bonds.

4.3. The Borrower hereby agrees to cause its Governing Body to adopt the Bond Resolution and to cause the Bond to be executed and delivered to the Department and the Loan made on or before **May 20, 2004**, a date not more than 90 days after the Loan Date. The Bond Resolution shall contain the provisions outlined in Exhibit C hereto, unless otherwise agreed in writing by the Department. On the date of delivery of the Bond, the Borrower will also deliver to the Department: (i) a certified copy of the Bond Resolution; (ii) an executed counterpart of any document, if any, granting the Department a security interest in collateral, if any, securing the Loan; (iii) an opinion of bond counsel, satisfactory to the Department, addressed to the Department and dated as of the date the Bond is issued, in form and substance acceptable to the Department, to the effect that: the Bond Resolution has been duly and validly

adopted by the Governing Body; the Bond has been duly authorized, executed and delivered; the Bond Resolution and the Bond each constitute a valid and binding obligation of the Borrower enforceable in accordance with their terms, subject to customary exceptions as to enforceability; and the interest on the Bond is not includable in gross income for purposes of federal income taxation; (iv) such other documents, certificates, opinions or agreements as are required under the Bond Resolution to be delivered to the Department as of the date of issuance of the Bond, and (v) such other opinions and certificates as the Department may reasonably request to demonstrate compliance with, or the ability of the Borrower to comply with, its representations, covenants and agreements contained in the Bond Resolution.

4.4. In consideration of the covenants of the Department herein, the Borrower agrees that if the Borrower fails to adopt the Bond Resolution and issue the Bond and the other documents referred to in paragraph 4.3 hereof by the date specified in said paragraph 4.3, the Borrower shall pay, whether or not the Loan is made or, if made, from whatever source, the Origination Fee.

The amount described in the immediately preceding paragraph shall be payable by the Borrower upon written demand therefor by the Department and, if not paid within 30 days after demand therefor, shall bear interest from the date of demand at an annual interest rate equal to ten percent (10.00%) per annum until paid in full.

4.5. If the Borrower fails to adopt the Bond Resolution and issue the Bond and the other documents referred to in paragraph 4.3 hereof by the date specified in said paragraph 4.3, the Department has no further obligation hereunder and may use the proceeds of State Bonds or other funds designated to fund the Loan for other purposes of the Program, including funding loans to other participants. If, however, (i) the Department consents, in its sole and absolute discretion, in a writing signed by the Director of the Department or, in the event of the Director's absence or disability, the acting Director of the Department, to an extension of the date specified in paragraph 4.3 hereof for the issuance of the Bond and the delivery of the related documents and (ii) the Borrower has paid to the Department an amount equal to the amount payable under paragraph 4.4 hereof, calculated by the Department and has observed any other conditions to such extension imposed by the Department in such consent, then the date in paragraph 4.3 hereof shall be deemed extended until the date specified in the consent, and this Agreement shall continue in full force and effect, except that (a) the Committed Amount shall be deemed reduced by the amount of the payment by the Borrower under clause (ii) and (b) the provisions of paragraph 4.4. hereof shall be deemed no longer effective.

#### Section 5. Modification of Project; Adjustment of Committed Amount.

5.1. Unless modified or adjusted pursuant to paragraph 5.2 hereof, the Borrower acknowledges and agrees that the Project shall conform substantially to the description thereof in Exhibit A hereto, the estimated Project Costs as of the date of issuance of the Bond shall not exceed the total amount of Project Costs stated on Exhibit B hereto, and the maximum principal amount of the Loan, and the maximum principal amount of the Bond evidencing the Loan, shall be equal to the Committed Amount.

5.2. After the date of this Agreement and before the date specified in paragraph 4.3 hereof, the Borrower may request that the Department consent to a modification of the Project, an increase in the costs thereof or an adjustment in the Committed Amount. If the Department, in its absolute and sole discretion, after consultation with the DEQ, determines to consent to a modification in the Project, an increase in the costs thereof or an increase or decrease in the Committed Amount, such consent shall be evidenced in a written amendment to this Agreement executed by the Department and the Borrower. The Borrower hereby agrees to pay upon demand the reasonable costs and expenses of the Department and the DEQ and their agents and consultants, including the fees and disbursement of counsel and bond counsel, in considering any such modification, whether or not the Department consents thereto.

Section 6. Miscellaneous.

6.1 Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

**Department:**                    **Department of Natural Resources and Conservation**  
**1625 Eleventh Avenue**  
**Helena, Montana 59620**  
**Attention: Anna Miller**

**Borrower:**                    **City of Great Falls**  
**PO Box 5021**  
**Great Falls, Montana 59403**  
**Attention: John Lawton, City Manager**

6.2. Binding Effect; Assignment. This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the Department and the Borrower and their respective successors. The Borrower may not assign its interest in this Agreement without the prior written consent of the Department.

6.3. Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Agreement or the enforceability of that provision at any other time.

6.4. Amendments. This Agreement may be amended only by a writing executed by the Department and the Borrower.

6.5. Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of Montana.

**THE STATE OF MONTANA DEPARTMENT OF NATURAL  
RESOURCES & CONSERVATION**

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**Authorized Official**

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**Title**

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**Date Signed**

**CITY OF GREAT FALLS**

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**Authorized Official**

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**Title**

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**Date Signed**

## EXHIBIT A

### DESCRIPTION OF PROJECT

**MDT Project:** Construct a new 7 and 8 foot diameter storm drain along 14<sup>th</sup> and 15<sup>th</sup> Streets from River Drive to Central Avenue and along Central Avenue from 14<sup>th</sup> to 15<sup>th</sup> Street. The new storm drain combined with the existing storm drain is designed to handle a peak flow from a 5-year 2-hour storm from the 3.25 square mile basin area.

**City Project:** Construct a new 7-foot diameter and a 10'x4' box culvert storm drain along Central Avenue from 15<sup>th</sup> Street to 18<sup>th</sup> Street (continuation of MDT project). The new storm drain combined with the existing storm drain is designed to handle a peak flow from a 5-year 2-hour storm from the 3.25 square mile basin area.

**City Project:** Construct a new 4-foot diameter storm drain along 1st Avenue North from 18<sup>th</sup> Street to 19<sup>th</sup> Street (continuation of MDT project). This disconnects the existing Valerian Way Storm Drain from the new storm drain on Central Avenue and reconnects it to the existing storm drain on 15<sup>th</sup> Street. The new storm drain combined with the existing storm drain is designed to handle a peak flow from a 5-year 2-hour storm from the 3.25 square mile basin area.

This project will be funded with funds from the SRF program and other funds from the city and the Montana Department of Transportation.

EXHIBIT B

USE OF BOND PROCEEDS

Costs of the Project

Construction.....	\$ 3,501,500
Engineering .....	\$ 0
Contingency.....	\$ 898,500
Admin., Local COI, & Planning.....	\$ 0
Subtotal.....	\$ 4,400,000

Other costs

Interest during construction.....	\$ 0
Reserve Account deposit.....	\$ 317,965*
State Origination Fee.....	\$ 44,000*
Administrative Fee .....	\$ 25,300*
Subtotal. ....	\$ 387,265

TOTAL.....\$ 4,400,000

**\*All fees with an asterisk will be paid by the borrower on the closing date and amounts are not included in the loan total.**

EXHIBIT C

SUMMARY OF THE BOND RESOLUTION

The following is a summary of certain provisions of the Bond Resolution, which outline the terms of the Loan and covenants securing the Loan, and an identification of the collateral, if any, in addition to the net revenues of the System, required to secure the Loan. This summary does not purport to be complete or definitive, and the actual provisions of the Bond Resolution embodying the requirements hereinafter outlined are available from the Department upon written request.

Terms of Loan

Estimated Principal Amount of Loan.....	<b>\$4,400,000</b>
Estimated Interest and Carrying Charge on Loan.....	<b>3.75% per annum</b>
Comprising:	
Interest rate.....	<b>2.00% per annum</b>
Administrative Expense Surcharge .....	<b>0.75% per annum</b>
Loan Loss Reserve Surcharge .....	<b>1.00% per annum</b>
Maximum Interest Charge (see paragraph 2.3) .....	<b>4.50% per annum</b>
Other Upfront Program Costs:	
Origination Fee .....	<b>\$44,000</b>
Administrative Fee .....	<b>\$25,300</b>

Disbursement of Loan

Proceeds of the Loan are to be disbursed after costs are incurred upon requisition and certification to the DEQ. If the DEQ approves the requisition, it will forward the requisition to the DNRC for approval. The DNRC, upon approving the requisition, will direct the trustee for the State Bonds to make the disbursement. The city will pay the Origination Fee and the Administrative Fee, which amounts will be retained by the DNRC. And any necessary deposit to the Reserve Account (see "Security for the Loan-Reserve Account" herein) will be made by the city on the day of closing.



## Repayment of Loan

Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge are payable in semiannual installments on each January 1 and July 1 (a "Payment Date"), commencing on the first Payment Date after the closing date of the Loan, unless such date is less than 30 days after the closing date in which case such payments will commence on the next succeeding Payment Date. Principal is payable, commencing on the second Payment Date after completion of the Project, in semiannual installments in \$1,000 amounts or integral multiples thereof. The amount of a principal installment shall be such that principal and interest at an assumed rate of **three and three quarter** percent **3.75%** per annum are amortized, as nearly as practicable (in principal amounts of \$1,000 or integral multiples thereof), in **40** equal semiannual payments.

Attached as Exhibit C-1 is a preliminary schedule of the payment terms of the Loan, based on the Loan Date and estimated construction schedule for the Project, assuming that the Loan is disbursed in an amount equal to the Committed Amount. A similar schedule will be appended to the Bond Resolution and the Bond, which will be adjusted following completion of the Project on the basis of the actual closing date of the Loan, the amount of the Loan disbursed and the completion date.

Term of Loan (from closing date): **20** years

## Prepayment Requires Consent

Prepayment is permitted, whether in whole or in part, only with the prior written notice of the DNRC and so long as no default is continuing under the Bond Resolution. Any permitted prepayment would need to include, in addition to the principal amount prepaid plus interest accrued thereon, all Administrative Surcharge and Loan Loss Reserve Surcharge accrued thereon to the date of prepayment.

## Security for the Loan

### Collateral

The collateral is a pledge of net revenues of the System to be effected in the Bond Resolution on parity with outstanding wastewater revenue debt, if any, and permitted future wastewater revenue debt issued on parity. (See "Parity Wastewater Debt" herein.)

### Reserve Account

A reserve account must be established to secure the Bond, whether in the Bond Resolution or in an earlier resolution of the Borrower. The amount on deposit herein, on the closing date of the Loan and on any date thereafter while the Bond is outstanding, must equal the maximum amount of principal and

interest payable in the current or any future fiscal year of the Borrower on the Bond (assuming that is issued in the Committed Amount and payable in accordance with the Schedule to be attached to the Bond Resolution) and on any other wastewater debt of the Borrower then outstanding. Proceeds of the Loan in an amount up to ten percent of the Committed Amount may be used to make any necessary deposit or deposits to the Reserve Account, whether at the closing date of the Loan or, as and to the extent, disbursements of the Loan are made.

#### Rate Covenant

The Bond Resolution will contain a covenant that the Borrower will charge rates, charges and rentals to all recipients of wastewater services and revise and maintain such rates, charges and rentals, subject to any required approval by the Public Service Commission, whenever and as often as necessary, according to schedules such that the revenues of the System for each fiscal year of the Borrower will be at least sufficient to pay the current expenses of operation and maintenance of the System, to maintain an operating reserve and to produce net revenues during each fiscal year, commencing with the fiscal year ending June 30, **2004** not less than 125% of the maximum principal and interest payable on the Bond and on any other wastewater debt of the Borrower then outstanding in the current or any future fiscal year.

#### Parity Wastewater Debt

The Bond Resolution or an outstanding resolution of the Borrower must provide that additional wastewater debt to finance improvements to the System may be issued or incurred and made payable from the net revenues of the System on a parity with the Bond only if the net revenues of the System for the last complete fiscal year of the Borrower preceding the date such debt is to be issued or incurred equaled at least 125% of the maximum amount of principal and interest payable on the Bond, any then outstanding debt payable from revenues of the System and the proposed debt in any subsequent fiscal year during the term of the Bond. The net revenues of the System from the Borrower's audited financial statements for such previous fiscal year may be adjusted as the Bond Resolution provides for any increase in the rates and charges of the System that have been implemented since the beginning of the previous fiscal year. In addition, the balance in the Reserve Account must be increased; on the date, such additional debt is to be incurred, to the required balance assuming that, the additional debt is outstanding.

#### Other Covenants and Representations

Among other provisions in the Bond Resolution, covenants will require the Borrower, among other things, to preserve the exemption from federal income taxation of the interest on the Bond and on the State Bonds, maintain the System and insurance thereon, maintain the corporate existence of the Borrower, observe certain investment restrictions, furnish to the DNRC an annual audited financial report, to establish or authorize competing service to the System, bill customers of the System monthly and, if bills are not paid within **60** days, discontinue water service to the premises, and indemnify the DNRC, the DEQ and the trustee under the Indenture against any claim or loss arising from the Project, the operation of the

System or the financing of the Project. The Borrower will also make representations regarding its ability to adopt the Bond Resolution and to issue the Bond and with respect to the Project and the System.

The borrower agrees to meet the state and federal requirements provided for in the Montana Wastewater Treatment Revolving Fund Act pursuant to Title 75, Chapter 5, Part 11: and Sections 601 through 607 of the Federal Water Pollution Control Act, 33 U.S.C. 1381 through 1387, as amended.

#### Funds and Accounts

In Bond Resolution or in an outstanding resolution of the Borrower, a wastewater system fund must be established to segregate revenues of the System and various accounts established therein, such as a Construction Account, Operating Account, Revenue Bond Account, Reserve Account, Replacement and Depreciation Account and Surplus Account, so as to ensure that proceeds of the Loan, revenues of the System and other funds are properly applied, all in a manner reasonably satisfactory to the DNRC.

EXHIBIT D

RESOLUTION OR AGREEMENT SECURING OUTSTANDING DEBT  
PAYABLE FROM REVENUES OF THE SYSTEM  
(See section 3.7)

The City of Great Falls has outstanding debt from Refunding Bonds issued in 2003 for \$1,950,000. A copy of the resolution is in the DNRC loan file.