

ORDINANCE NO. 614

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE SANITARY SEWAGE DISPOSAL SYSTEM OF THE CITY OF ST. IGNACE; TO PROVIDE FOR THE ISSUANCE AND SALE OF JUNIOR LIEN REVENUE BONDS TO PAY THE COST THEREOF; TO PRESCRIBE THE FORM OF THE BONDS; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; TO PROVIDE FOR SECURITY FOR THE BONDS; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF THE REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS IN ENFORCEMENT THEREOF; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE BONDS AND THE SYSTEM.

THE CITY OF ST. IGNACE ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

- "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.
- "Authority" means the Michigan Municipal Bond Authority.
- "Authorized Officers" means the Mayor, the City Clerk, the City Manager and the City Treasurer of the Issuer.
- "Bonds" means the Series 2008 Bonds, together with any additional bonds heretofore or hereafter issued of equal standing with the Series 2008 Bonds.
- "Engineers" means Wilcox & Associates, consulting engineers of Escanaba, Michigan.
- "Issuer" means the City of St. Ignace, County of Mackinac, Michigan.
- "Junior Lien Bonds" means the Series 2008 Bonds, and any additional bonds that are of equal standing with the Series 2008 Bonds, and junior in standing to the Senior Lien Bonds.
- "MDEQ" means the Michigan Department of Environmental Quality.
- "Outstanding Bonds" means the Issuer's Sanitary Sewage Disposal System Revenue Bond, Series 1999A, dated April 6, 1999, in the outstanding principal amount of \$666,000, and Sanitary Sewage Disposal System Revenue Bond, Series 1999B, dated April 6, 1999, in the outstanding principal amount of \$91,000.
- "Prior Ordinances" means, collectively, the ordinances and resolutions adopted by the City Council authorizing the issuance of the Outstanding Bonds.
- "Project" means the acquisition, construction, furnishing and equipping of additions, extensions and improvements to the City's Sanitary Sewage Disposal System, together with all necessary interests in land, rights of way and all appurtenances and attachments therefor, as described in the plans prepared by the Engineers and approved herein.
- "Purchase Contract" means the Purchase Contract to be entered into between the Authority and the Issuer relating to the purchase by the Authority of the Series 2008 Bonds.
- "Revenues" and "Net Revenues" means the revenues and net revenues of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues", the earnings derived from the investment of moneys in the various funds and accounts established by the Prior Ordinances and this Ordinance.
- "Senior Lien Bonds" means the Outstanding Bonds and any additional bonds issued pursuant to the Prior Ordinances that are of equal standing and priority of lien with the Outstanding Bonds.
- "Series 2008 Bonds" means the Sanitary Sewage Disposal System Junior Lien Revenue Bond, Series 2008 (Limited Tax General Obligation), in the principal amount of not to exceed \$3,655,000 issued pursuant to this Ordinance.
- "Sufficient Government Obligations" means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.
- "Supplemental Agreement" means the supplemental agreement among the Issuer, the Authority and MDEQ relating to the Series 2008 Bonds.
- "System" means the entire Sanitary Sewage Disposal System of the Issuer, including the Project and all additions, extensions and improvements hereafter acquired.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be a necessary public purpose of the Issuer to acquire and construct the Project in accordance with the plans and specifications prepared by the Engineers, which plans and specifications are hereby approved. The Project is being constructed pursuant to and is necessary to comply with Administrative Consent Order No. ACSO-SW02-002, as amended, entered into between the Issuer and the MDEQ. The Project qualifies for the State Revolving Fund financing program being administered by the MDEQ and the Authority, whereby bonds of the Issuer are sold to the Authority and bear interest at a fixed rate of two and one-half percent (2.50%) per annum.

Section 3. Costs; Useful Life. The cost of the Project is estimated to be Three Million Six Hundred Fifty-Five Thousand Dollars (\$3,655,000), including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the Project is estimated to be not less than twenty-two (22) years.

Section 4. Payment of Cost; Bonds Authorized. To pay part of the cost of acquiring and constructing the Project, legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2008 Bonds, the Issuer shall borrow the sum of not to exceed Three Million Six Hundred Fifty-Five Thousand Dollars (\$3,655,000), or such lesser amount as shall have been advanced to the Issuer pursuant to the Purchase Contract and the Supplemental Agreement, and issue the Series 2008 Bonds pursuant to the provisions of Act 94. The remaining cost of the Project, if any, shall be defrayed from Issuer funds on hand and legally available for such use.

Except as amended by or expressly provided to the contrary in this Ordinance, all of the provisions of the Prior Ordinances shall apply to the Series 2008 Bonds issued pursuant to this Ordinance, the same as though each of said provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of additional revenue bonds of subordinate lien with respect to the Outstanding Bonds to finance the cost of acquiring and constructing additions, extensions and improvements to the System, additional bonds of subordinate standing with the Outstanding Bonds for such purpose being authorized by the provisions of the Prior Ordinances, upon the conditions therein stated, which conditions have been fully met.

Section 5. Issuance of Series 2008 Bonds; Details. The Series 2008 Bonds of the Issuer, to be designated **SANITARY SEWAGE DISPOSAL SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2008 (LIMITED TAX GENERAL OBLIGATION)**, are authorized to be issued in the aggregate principal sum of not to exceed Three Million Six Hundred Fifty-Five Thousand Dollars (\$3,655,000) as finally determined by order of the MDEQ for the purpose of paying part of the cost of the Project, including the costs incidental to the issuance, sale and delivery of the Series 2008 Bonds. The Series 2008 Bonds shall be payable primarily out of the Net Revenues, as set forth more fully in Section 8 hereof, provided that the Series 2008 Bonds shall be subordinate to the prior lien with respect to the Net Revenues in favor of the Outstanding Bonds and of any additional bonds of equal standing with the Outstanding Bonds hereafter issued. The Series 2008 Bonds shall be in the form of a single fully-registered, nonconvertible bond of the denomination of the full principal amount thereof, dated as of the date of delivery, payable in principal installments as finally determined by the order of the MDEQ at the time of sale of the Series 2008 Bonds and approved by the Authority and an Authorized Officer. Principal installments of the Series 2008 Bonds shall be payable on October 1 of the years 2010 through 2029, inclusive, or such other payment dates as hereinafter provided. Interest on the Series 2008 Bonds shall be payable on April 1 and October 1 of each year, commencing April 1, 2009 or on such other interest payment dates as hereinafter provided. Final determination of the principal amount of and interest on the Series 2008 Bonds and the payment dates and amounts of principal installments of the Series 2008 Bonds shall be evidenced by execution of the Purchase Contract and each of the Authorized Officers is authorized and directed to execute and deliver the Purchase Contract when it is in final form and to make the determinations set forth above; provided, however, that the first principal installment shall be due no earlier than October 1, 2009 and the final principal installment shall be due no later than October 1, 2030 and that the total principal amount shall not exceed \$3,655,000.

The Series 2008 Bonds shall bear interest at a rate of two and one-half percent (2.50%) per annum on the par value thereof or such other rate as evidenced by execution of the Purchase Contract, but in any event not to exceed the rate permitted by law, and any Authorized Officers as shall be appropriate shall deliver the Series 2008 Bonds in accordance with the delivery instructions of the Authority.

The principal amount of the Series 2008 Bonds is expected to be drawn down by the Issuer periodically, and interest on principal amount shall accrue from the date such principal amount is drawn down by the Issuer.

The Series 2008 Bonds shall not be convertible or exchangeable into more than one fully-registered bond. Principal of and interest on the Series 2008 Bonds shall be payable as provided in the Series 2008 Bonds form in this Ordinance.

The Series 2008 Bonds shall be subject to optional redemption by the Issuer with the prior written approval of the Authority and on such terms as may be required by the Authority.

The City Clerk shall record on the registration books payment by the Issuer of each installment of principal or interest or both when made and the cancelled checks or other records evidencing such payments shall be returned to and retained by the City Clerk.

Upon payment by the Issuer of all outstanding principal of and interest on the Series 2008 Bonds, the Authority shall deliver the Series 2008 Bonds to the Issuer for cancellation.

Section 6. Execution of Series 2008 Bonds. The Series 2008 Bonds shall be signed by the manual signature of the Mayor and countersigned by the manual signature of the City Clerk and shall have the corporate seal of the Issuer or facsimile thereof impressed thereon. The Series 2008 Bonds bearing the manual signatures of the Mayor and the City Clerk sold to the Authority shall require no further authentication.

Section 7. Registration and Transfer. Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the transfer agent. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the transfer agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The transfer agent shall require payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 2008 Bonds contained in Section 13 of this Ordinance and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part. The Issuer shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the Issuer; and upon presentation for such purpose the transfer agent shall under such reasonable regulations as it may prescribe transfer or cause to be transferred on said books Bonds as hereinbefore provided.

If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the transfer agent of the mutilated Bond. If any Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the Issuer, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the transfer agent may pay the same without surrender thereof.

Section 8. Payment of Series 2008 Bonds; Security; Priority of Lien. Principal of and interest on the Series 2008 Bonds shall be payable primarily from the Net Revenues. There is hereby recognized the statutory lien upon the whole of the Net Revenues created by this Ordinance which shall be a lien that is junior and subordinate to the lien of the Senior Lien Bonds created by the Prior Ordinances, to continue until payment in full of the principal of and interest on all Bonds payable from the Net Revenues, or until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of all Bonds of a series then outstanding, principal and interest on such Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentence, the statutory lien shall be terminated with respect to that series of Bonds, the holders of that series shall have no further rights under the Prior Ordinances or this Ordinance except for payment from the deposited funds, and the Bonds of that series shall no longer be considered to be outstanding under the Prior Ordinances or this Ordinance.

The Issuer hereby pledges its limited tax full faith and credit for the payment of the principal of and interest on the Series 2008 Bond. Should the Net Revenues of the System at any time be insufficient to pay principal and interest on the Series 2008 Bond, as the same become due, then the Issuer shall advance from any funds legally available therefor, or, if necessary, levy taxes upon all taxable property in the Issuer, in an amount sufficient to make such payment, subject however to constitutional, statutory and charter tax rate limitations. The Issuer shall be reimbursed for any such advance from the Net Revenues of the System subsequently received which are not otherwise pledged or encumbered by this Ordinance.

Section 9. Management; Fiscal Year. The operation, repair and management of the System and the acquiring and constructing of the Project shall continue to be under the supervision and control of the Issuer. The Issuer may employ such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the System. The Issuer may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of the System. The System shall be operated on the basis of an operating year which shall coincide with the Issuer's fiscal year.

Section 10. Rates and Charges; No Free Service. The rates and charges for service furnished by the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Ordinance. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm, or corporation, public or private, or to any public agency or instrumentality, including the Issuer.

Section 11. Funds and Accounts; Flow of Funds; Junior Lien Bond and Interest Redemption Fund. The funds and accounts established by the Prior Ordinances are hereby continued, provided that a Junior Lien Bond and Interest Redemption Fund shall be established as follows:

There shall be established and maintained a separate depository fund designated "Junior Lien Bond and Interest Redemption Fund" (the "Junior Lien Fund"), the moneys on deposit therein from time to time to be used solely for the purpose of paying the principal of, redemption premiums (if any) and interest on the Series 2008 Bonds, and any bonds of equal standing with the Series 2008 Bonds.

Out of the Net Revenues remaining in the Receiving Fund after provision has been made for the Operation and Maintenance Fund and only after provision has been made for the Redemption Fund, there shall be set aside monthly in the Junior Lien Fund a sum proportionately sufficient to provide for the payment when due of the current principal of and interest on the Series 2008 Bonds, less any amount in the Junior Lien Fund representing accrued interest on the Series 2008 Bonds. Commencing on October 1, 2008, the amount set aside each month for interest on the Series 2008 Bonds shall be 1/6 of the total amount of interest on the Series 2008 Bonds next coming due. The amount set aside each month for principal on the Series 2008 Bonds, commencing October 1, 2009, shall be 1/12 of the amounts of principal next coming due. If there is any deficiency in the amounts previously set aside, that deficiency shall be added to the next succeeding months' requirements.

No moneys shall be set aside and credited to the Junior Lien Fund unless and until the Issuer is current with respect to all required transfers to all other funds under the Prior Ordinance and there is no default in any payments or requirements under the Prior Ordinance.

If for any reason there is a failure to make such quarterly deposit in the amounts required, then the entire amount of the deficiency shall be set aside and deposited in the Junior Lien Bond Redemption Account out of the Revenues first received thereafter which are not required by this Ordinance to be deposited in

the Operation and Maintenance Account or the Bond and Interest Redemption Fund or the Junior Lien Bond Redemption Account, which amount shall be in addition to the regular monthly deposit required during such succeeding month or months.

Section 12. Bond Proceeds. The proceeds of the sale of the Series 2008 Bonds as received by the Issuer shall be deposited in a separate account in a bank or banks qualified to act as depository of the proceeds of sale under the provisions of Section 15 of Act 94 designated SANITARY SEWAGE DISPOSAL SYSTEM JUNIOR LIEN REVENUE BONDS, SERIES 2008 CONSTRUCTION FUND (the "Construction Fund"). Moneys in the Construction Fund shall be applied solely in payment of the cost of the Project and any engineering, legal and other expenses incident thereto and to the financing thereof.

Section 13. Bond Form. The Series 2008 Bonds shall be in substantially the following form with such changes or completion as necessary or appropriate to give effect to the intent of this Ordinance:

**UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MACKINAC
CITY OF ST. IGNACE**

**SANITARY SEWAGE DISPOSAL SYSTEM
JUNIOR LIEN REVENUE BOND, SERIES 2008
(LIMITED TAX GENERAL OBLIGATION)**

REGISTERED OWNER: Michigan Municipal Bond Authority

PRINCIPAL AMOUNT: _____ Dollars (\$____,000)

DATE OF ORIGINAL ISSUE: _____, 2008

The CITY OF ST. IGNACE, County of Mackinac, State of Michigan (the "City"), for value received, hereby promises to pay, primarily out of the hereinafter described Net Revenues of the City's Sanitary Sewage Disposal System (hereinafter defined), to the Michigan Municipal Bond Authority (the "Authority"), or registered assigns, the Principal Amount shown above, or such portion thereof as shall have been advanced to the City pursuant to a Purchase Contract between the City and the Authority and a Supplemental Agreement by and among the City, the Authority and the State of Michigan acting through the Department of Environmental Quality, in lawful money of the United States of America, unless prepaid prior thereto as hereinafter provided.

During the time the Principal Amount is being drawn down by the City under this bond, the Authority will periodically provide to the City a statement showing the amount of principal that has been advanced and the date of each advance which statement shall constitute prima facie evidence of the reported information; provided that no failure on the part of the Authority to provide such a statement or to reflect a disbursement or the correct amount of a disbursement shall relieve the City of its obligation to repay the outstanding Principal Amount actually advanced, all accrued interest thereon, and any other amount payable with respect thereto in accordance with the terms of this bond.

The Principal Amount shall be payable on the dates and in the annual principal installment amounts set forth on the Schedule attached hereto and made a part hereof, as such Schedule may be adjusted if less than \$_____ is disbursed to the City or if a portion of the Principal Amount is prepaid as provided below, with interest on said principal installments from the date each said installment is delivered to the holder hereof until paid at the rate of two and one-half percent (2.50%) per annum. Interest is first payable on April 1, 2009, and semiannually thereafter on the first day of April and October of each year, as set forth in the Purchase Contract.

Notwithstanding any other provision of this Bond, so long as the Authority is the owner of this Bond, (a) this Bond is payable as to principal, premium, if any, and interest at The Bank of New York Mellon Trust Company, N.A. or at such other place as shall be designated in writing to the City by the Authority (the "Authority's Depository"); (b) the City agrees that it will deposit with the Authority's Depository payments of the principal of, premium, if any, and interest on this Bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise; in the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment; and (c) written notice of any redemption of this Bond shall be given by the City and received by the Authority's Depository at least 40 days prior to the date on which such redemption is to be made.

Additional Interest

In the event of a default in the payment of principal or interest hereon when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "additional interest") at a rate equal to the rate of interest which is two percent above the Authority's cost of providing funds (as determined by the Authority) to make payment on the bonds of the Authority issued to provide funds to purchase this bond but in no event in excess of the maximum rate of interest permitted by law. The additional interest shall continue to accrue until the Authority has been fully reimbursed for all costs incurred by the Authority (as determined by the Authority) as a consequence of the City's default. Such additional interest shall be payable on the interest payment date following demand of the Authority. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the Authority) the investment of amounts in the reserve account established by the Authority for the bonds of the Authority issued to provide funds to purchase this bond fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the Authority issued to fund such account, the City shall and hereby agrees to pay on demand only the City's pro rata share (as determined by the Authority) of such deficiency as additional interest on this bond.

For prompt payment of principal and interest on this bond, the City has irrevocably pledged the revenues of the Sanitary Sewage Disposal System of the City, including all appurtenances, extensions and improvements thereto (the "Sanitary Sewage Disposal System"), after provision has been made for reasonable and necessary expenses of operation, maintenance and administration (the "Net Revenues"), and a statutory lien thereon is hereby recognized and created which is junior in standing and priority of lien as to the prior lien of the City's Sanitary Sewage Disposal System Revenue Bond, Series 1999A, and Sanitary Sewage Disposal System Revenue Bond, Series 1999B (together, the "Outstanding Bonds") of the City and of any additional bonds of the City of equal standing and priority of lien with the Outstanding Bonds.

This bond is a single, fully-registered, non-convertible bond in the principal sum indicated above issued pursuant to Ordinance No. ____ duly adopted by the City Council of the City (the "Ordinance") and the Prior Ordinances and resolutions authorizing issuance of the Outstanding Bonds (the "Prior Ordinances"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying part of the cost of acquiring and constructing additions, extensions and improvements to the Sanitary Sewage Disposal System of the City.

For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of superior and equal standing may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to the Ordinance and the Prior Ordinances.

This bond is primarily a self-liquidating bond, payable, both as to principal and interest, from the Net Revenues of the Sanitary Sewage Disposal System. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned. As additional security, the City has pledged its limited tax full faith and credit for payment of the principal of and interest on this bond. In the event the Net Revenues are insufficient to pay the principal of and interest on this bond when due, the City shall advance sufficient funds to make such payment from its general fund or, if necessary, from ad valorem taxes levied on all property in the City subject to taxation, provided that such levy shall be subject to constitutional, statutory and charter tax rate limitations.

The City has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the Sanitary Sewage Disposal System shall be outstanding, such rates for service furnished by the Sanitary Sewage Disposal System as shall be sufficient to provide for payment of the interest upon and the principal of this bond and any bonds of equal standing with this bond, the Outstanding Bonds and any additional bonds of equal standing with the Outstanding Bonds, as and when the same shall become due and payable, and to maintain a bond redemption fund (including, except for bonds of this issue, a bond reserve account) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the Sanitary Sewage Disposal System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the Sanitary Sewage Disposal System as are required by the Ordinance and the Prior Ordinances.

Ordinance No. 614 continued on page 21