

RESOLUTION NO. 2019-09

**RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND
DELIVERY OF A \$947,000 GENERAL OBLIGATION SEWER UTILITY
REVENUE BOND, SERIES 2019A, TO PAY A PART OF THE COST OF
SEWER UTILITY IMPROVEMENTS; ESTABLISHING THE TERMS
AND CONDITIONS THEREFOR;
AND AWARDING THE SALE THEREOF**

BE IT RESOLVED, by the City Council (the "Council") of the City of Lucan, Redwood County, Minnesota (the "Issuer"), as follows:

Section 1. Bond Purpose, Authorization and Award.

1.01 Recitals.

A. Under and pursuant to the provisions of Minnesota Statutes, Sections 115.46 and 444.075 and Chapter 475, the Issuer is authorized to issue general obligation bonds to finance in whole or in part the expenses incurred in financing construction of improvements to its sewer system (the "Sewer Utility"), including construction of a new lift station, new force main, new pond, rehabilitation of existing pond and generator (the "Project").

B. The Issuer previously adopted a resolution applying for financial assistance from the United State Department of Agriculture acting under the provisions of the Consolidated Farm and Redevelopment Act (7 USC 1921 et. seq.) (the "USDA") dated May 22, 2017 (the "Loan Resolution"). The terms and provisions of the Loan Resolution are incorporated herein by reference.

C. The Issuer has previously issued its \$947,000 General Obligation Bond Anticipation Note, dated July 20, 2018 (the "2018 Temporary Note") in order to provide short-term construction financing for the Project.

D. The 2018 Temporary Note is subject to redemption and prepayment at the option of the Issuer on any date at a price of par plus accrued interest (the "Redemption Date").

1.02 Finding. The Council has found that it is necessary and in the best interest of the Issuer and its taxpayers to refund the 2018 Temporary Note on a long-term basis by obtaining a loan from the USDA, as the Issuer is unable to obtain sufficient credit elsewhere to refinance the 2018 Temporary Note, taking into consideration prevailing private interest rates and terms currently available. Such finding is ratified and confirmed.

1.03 Net Revenues Defined. The Bond (hereinafter defined) is payable primarily from revenues to be derived from the operation of the Sewer Utility from time to time received in excess of the current costs of operating and maintaining the Sewer Utility (the "Net Revenues").

1.04 The Bond. Pursuant to the authority herein recited, the Issuer has applied for and received approval of a \$947,000 loan from the USDA to refinance the 2018 Temporary Note (the "Loan"), and authorizes and directs the issuance and sale of the \$947,000 General Obligation Sewer Utility Revenue Bond, Series 2019A (the "Bond") of the Issuer to the USDA on the terms as hereinafter provided to evidence the Loan.

Section 2. Terms of the Bond.

2.01 The Bond shall be a single bond, dated the date of delivery, in fully registered form, in the amount of \$947,000, with principal payable in 40 materially equal installments of principal and interest in the approximate amount of \$32,388 on the anniversary date of issuance of the Bond in each year commencing with the initial payment on the anniversary date of issuance of the Bond in the year 2020.

2.02 Interest Payments.

A. The Bond shall bear interest on the unpaid principal balance at the rate of 1.625% per annum or such lower rate as may be in effect prior to closing and delivery of the Bond. Interest shall be payable on the anniversary date of issuance of the Bond in each year (the "Interest Payment Date") commencing with the initial interest payment on the anniversary date of issuance of the Bond in the year 2020 through and including the anniversary date of issuance of the Bond in the year 2059.

B. Payments shall be applied first to interest due through the stated maturity date set forth above on the unpaid balance of the Bond and thereafter to reduction of principal. Delinquent payments, if any, shall be applied by the registered holder in the following sequence: (1) billed delinquent interest, (2) past-due interest installments, (3) past-due principal installments, (4) interest installments due and (5) principal installments due.

C. The Bond is subject to redemption and prepayment, in whole or in part, at the option of the Issuer on any date, at par plus accrued interest. Partial prepayments of principal on the Bond shall be applied to the principal amounts last to come due. Notice of redemption shall be given in accordance with the rules and regulations of the USDA and Minnesota Statutes, Chapter 475.

2.03 Registration and Transfer. The Bond is transferable upon the books of the Issuer at the office of the Clerk, by the registered holder of the Bond in person or by its attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Clerk, fully executed by the registered holder or its duly authorized attorney. Upon such transfer, the Clerk will note the date of registration and the name of the newly registered holder in the registration blank appearing on the Bond. The Issuer may deem and treat the person in whose name the Bond is last registered upon the books of the Issuer, with such registration noted on the Bond, as the absolute owner thereof for the purpose of receiving payment of or on account of the principal balance or interest on the Bond and for all other purposes; and all such payments so made to the registered holder shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid and the Issuer will not be affected by notice to the contrary.

Section 3. Form, Preparation and Delivery of the Bond.

3.01 The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF REDWOOD

No. R-1

\$947,000

CITY OF LUCAN
GENERAL OBLIGATION SEWER UTILITY REVENUE BOND, SERIES 2019A

| | | |
|-------------|-------------------------------|----------------------|
| <u>Rate</u> | <u>Date of Original Issue</u> | <u>Maturity Date</u> |
| 1.625% | _____, 2019 | October ____, 2059 |

REGISTERED OWNER: UNITED STATES OF AMERICA
(acting through the United States Department of Agriculture)

PRINCIPAL AMOUNT: NINE HUNDRED FORTY-SEVEN THOUSAND DOLLARS

The City of Lucan, in Redwood County, Minnesota (the "Issuer"), for value received promises to pay to the registered owner set forth above, or registered assigns (the "Holder"), at such address as shall be designated in writing by the Holder, the principal amount set forth above in 40 installments, on October ____ of each year commencing with the initial principal installment on October ____, 2020, in the principal installment amounts and the years stated below:

| Payment Date | Principal Amount Due | Payment Date | Principal Amount Due |
|--------------|----------------------|--------------|----------------------|
| 2020 | \$16,999.25 | 2040 | \$23,466.10 |
| 2021 | 17,275.49 | 2041 | 23,847.42 |
| 2022 | 17,556.21 | 2042 | 24,234.95 |
| 2023 | 17,841.50 | 2043 | 24,628.76 |
| 2024 | 18,131.43 | 2044 | 25,028.98 |
| 2025 | 18,426.06 | 2045 | 25,435.70 |
| 2026 | 18,725.49 | 2046 | 25,849.03 |
| 2027 | 19,029.78 | 2047 | 26,269.08 |
| 2028 | 19,339.01 | 2048 | 26,695.95 |
| 2029 | 19,653.27 | 2049 | 27,129.76 |
| 2030 | 19,972.63 | 2050 | 27,570.62 |
| 2031 | 20,297.19 | 2051 | 28,018.64 |
| 2032 | 20,627.02 | 2052 | 28,473.94 |
| 2033 | 20,962.21 | 2053 | 28,936.65 |
| 2034 | 21,302.84 | 2054 | 29,406.87 |
| 2035 | 21,649.01 | 2055 | 29,884.73 |
| 2036 | 22,000.81 | 2056 | 30,370.36 |
| 2037 | 22,358.32 | 2057 | 30,863.87 |
| 2038 | 22,721.65 | 2058 | 31,365.41 |
| 2039 | 23,090.87 | 2059 | 31,875.10 |

and to pay interest on the unpaid principal balance to the Holder, said interest being at the rate per annum set forth above. Interest shall be computed on the basis of the actual days elapsed in a year of 365 days. Interest is payable to the Holder commencing October _____, 2020, and annually thereafter on October _____ of each year through and including the Maturity Date set forth above. The principal of and interest on this Bond are payable in such funds as are legal tender for payment of debts due the United States of America. Payments shall be applied first to interest due through the maturity date set forth above on the unpaid principal balance and thereafter to reduction of principal. Delinquent payments, if any, shall be applied by the Holder in the following sequence: (1) billed delinquent interest, (2) past-due interest installments, (3) past-due principal installments, (4) interest installments due and (5) principal installments due.

For the prompt and full payment of such principal and interest as they become due, the full faith and credit and taxing power of the Issuer are irrevocably pledged. This Bond is issued pursuant to the authority contained in Minnesota Statutes, Sections 115.46 and 444.075 and Chapter 475, an authorizing resolution adopted by the governing body of the Issuer on October 7, 2019 (the "Resolution") and all other laws thereunto enabling, to refinance, on a long term basis, the Issuer's \$947,000 General Obligation Bond Anticipation Note dated July 20, 2018, previously issued to provide a part of the financing for construction of sewer system improvements within the boundaries of the Issuer. In the Resolution, the Issuer has pledged and appropriated the net revenues to be derived from the operation of its sewer system (the "Sewer Utility") in excess of normal, reasonable and current costs of the operation and maintenance of the Sewer Utility for the payment of the principal and interest when due on the Bond, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the Sewer Utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining the Sewer Utility, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bond. Reference is made to the Resolution for a full statement of rights and powers thereby conferred.

This Bond is subject to redemption and prepayment, in whole or in part, at the option of the Issuer on any date, at par plus accrued interest. Any partial prepayment of this Bond shall be applied to the principal installments last to come due as provided above. Notice of redemption shall be given in accordance with the rules and regulations of the Holder and Minnesota Statutes, Chapter 475.

The Issuer acknowledges the provisions of 7 U.S.C. 1983(3) and the right of USDA to require the redemption of the entire unpaid principal amount of the Bond in accordance therewith.

This Bond is transferable upon the books of the Issuer at the office of the Clerk, by the registered Holder hereof in person or by its attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Clerk, duly executed by the registered Holder or its duly authorized attorney. Upon such transfer, the Clerk will note the date of

registration and the name of the newly registered Holder in the registration blank appearing below. The Issuer may deem and treat the person in whose name this Bond is last registered upon the books of the Issuer, with such registration noted on the Bond, as the absolute owner hereof for the purpose of receiving payment of or on account of the principal balance or interest on this Bond and for all other purposes; all such payments so made to the registered Holder or upon its order shall be valid and effectual to satisfy and discharge the liability upon this Bond to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

The Issuer has designated this Bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

It is certified and recited that all acts and conditions required by the laws and the Constitution of the State of Minnesota to be done and to exist precedent to and in the issuance of this Bond, in order to make it a valid and binding general obligation of the Issuer in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the boundaries of the Issuer is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the Issuer to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Lucan has caused this Bond to be signed by its Mayor, and attested by its Clerk, and has caused this Bond to be dated the date of original issue set forth above.

(Form-no signature required)
Mayor

ATTEST:

(Form-no signature required)
Clerk

PROVISIONS AS TO REGISTRATION

The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of the City of Lucan, Minnesota in the name of the registered Holder last noted below.

| <u>Date of Registration</u> | <u>Name of Registered Holder</u> | <u>Signature of Clerk</u> |
|-----------------------------|---|----------------------------------|
| ____/____/2019 | United States of America, acting through the United States Department of Agriculture | <u>(form – do not sign here)</u> |

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____

(Name and Address of Assignee)

Social Security or Other
Identifying Number of Assignee

the within Bond and all rights thereunder and irrevocably constitutes and appoints _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

3.03 Execution. The Bond shall be executed on behalf of the Issuer by the manual signatures of the Mayor and Clerk on the face of the Bond. The corporate seal may be omitted from the Bond as permitted by law.

3.04 Delivery. The Bond when so prepared and executed shall be delivered under the direction of the Treasurer to the USDA upon receipt of the purchase price.

Section 4. Funds, Accounts and Covenants.

4.01 Rate Covenant. The Issuer covenants and agrees with the holder of the Bond and with its taxpayers that it will impose and collect just and equitable charges for all use and for the

availability of all facilities of the Sewer Utility at the times and in the amounts required to pay the normal, reasonable, and current expenses of operating and maintaining such Sewer Utility, and also to produce Net Revenues which will be at least adequate at all times to pay the principal and interest due on the Bond and on all other notes and bonds heretofore or hereafter issued and made payable from said Net Revenues, and will operate the Sewer Utility and segregate and account for the revenues thereof as provided in this Section.

4.02 Sewer Fund.

A. The issuer has agreed to place all charges described in Section 4.01 above relating to the Sewer Utility when collected, and all money received from the sale of any facilities or equipment of the Sewer Utility in the Sewer Fund (the "Sewer Fund") previously established by the Issuer.

B. The Sewer Fund will be continued as a single fund administered by the issuer and held to serve as a depository for all sums, including bond proceeds, special assessments, tax levies and Sewer Utility revenues received on account of the Sewer Utility.

C. Except as provided in this Section, the Sewer Fund may be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable, and current expenses of operating and maintaining the Sewer Utility; to maintain such reasonable reserves for such expenses and other reasonable operating reserves as the Issuer determines to be necessary from time to time, including the reserves described in Section 4.05 hereof; and as may otherwise be permitted by Minnesota Statutes, Chapter 444.

4.03 Prior Debt Service Account. The proceeds of the Bond are irrevocably appropriated and allocated to the Governmental Note Debt Service Fund established for the 2018 Temporary Note (the "Prior Debt Service Account") which, together with available funds therein, shall be used solely to pay the 2018 Temporary Note on the Redemption Date. Upon redemption of the 2018 Temporary Note, the Prior Debt Service Account shall be terminated, and all monies remaining therein not required to pay the 2018 Temporary Note in full shall be transferred to the Debt Service Account herein created. The Issuer further irrevocably appropriates to the Prior Debt Service Account, funds of the Issuer in the amount necessary to pay the accrued interest due on the 2018 Temporary Note on the Redemption Date.

4.04 Debt Service Account.

A. A separate debt service fund is created and is designated as the "2019 Sewer Utility Revenue Bond Debt Service Account" (the "Debt Service Account"). The money in the Debt Service Account shall be used for no purpose other than the payment of principal and interest on the Bond.

B. There are irrevocably appropriated and pledged to the Debt Service Account Net Revenues and investment earnings thereon to pay the principal of and interest on the Bond when due in the amounts set forth below.

C. Prior to each Interest Payment Date, the Treasurer shall transfer from the Sewer Fund to the Debt Service Account amounts of Net Revenues which are sufficient, for the payment of all interest and principal then due on the Bond. If the balances in the Debt Service Account are ever insufficient to pay all principal and interest then due on the Bond, the Treasurer shall nevertheless provide sufficient money from any other funds of the Issuer which

are available for that purpose and such other funds shall be reimbursed from the Debt Service Account when the balance therein is sufficient.

D. It is recognized, however, that the Issuer's liability on the Bond is not limited to the monies appropriated pursuant to Section 4.02 hereof and this Section 4.04 and the Council covenants and agrees that it will levy upon all taxable property within the Issuer, and cause to be extended, assessed, and collected, any additional taxes found necessary for full payment of the principal of and interest on the Bond, without limitation as to rate or amount.

4.05 Required Reserves. The Issuer shall maintain the reserves required in the Commitment Letter from USDA, a true and correct copy of which will be included in the closing transcript.

4.06 No Tax Levy. The full faith and credit and taxing powers of the Issuer are irrevocably pledged for the prompt and full payment of the principal of and interest on the Loan, as such principal and interest respectively become due. However, the monies and payments appropriated to the Debt Service Account in Section 4.04 hereof are estimated to be not less than five percent in excess of the principal of and interest on the Bond when due, and accordingly, no tax is levied at this time.

4.07 Investments. Monies on deposit in the Sewer Fund and the Debt Service Account may, at the discretion of the Treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided that any such investments shall mature at such times and in such amounts as will permit payment of the principal and interest on the Bond when due.

Section 5. Tax Covenants.

5.01 General.

A. The Issuer covenants and agrees to comply with requirements under the Internal Revenue Code of 1986, as amended (the "Code"), necessary to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Bond, including without limitation (1) requirements relating to temporary periods for investment, (2) limitation on amounts invested at a yield greater than the yield on the Bond, and (3) the rebate of excess investment earnings to the United States if the proceeds of the Bond are not spent within six months of the date of closing and delivery of the Bond.

B. The Issuer covenants and agrees with the holders of the Bond that the Issuer will (1) take all action on its part necessary to cause the interest on the Bond to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bond and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (2) refrain from taking any action which would cause interest on the Bond to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bond and investment earnings thereon on certain specified purposes.

C. No portion of the proceeds of the Bond shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bond was issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Bond or

\$100,000. To this effect, any proceeds of the Bond and any sums from time to time held in the Debt Service Account (or any other Issuer account which will be used to pay principal and interest to become due on the Bond) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

D. The proceeds of the Bond and money in the Debt Service Account shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bond to be federally guaranteed within the meaning of Section 149(b) of the Code.

E. The Issuer covenants not to use the proceeds of the Bond, or to cause or permit them to be used, in such a manner as to cause the Bond to be “private activity bonds” within the meaning of Sections 103 and 141 through 150 of the Code.

5.02 Arbitrage Rebate Exception. The Issuer expects all proceeds of the Bond will be spent on the Redemption Date, which is a date within six months of the date of closing and delivery of the Bond and no rebate of arbitrage profits will be required.

5.03 Bank Qualification. In order to qualify the Bond as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code, the Issuer makes the following factual statements and representations:

A. the Bond is not “private activity bonds” as defined in Section 141 of the Code;

B. the Issuer designates the Bond as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

C. the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which will be issued by the Issuer (and all entities whose obligations will be aggregated with those of the Issuer) during the calendar year in which the Bond is issued will not exceed \$10,000,000; and

D. not more than \$10,000,000 of obligations issued by the Issuer during the calendar year in which the Bond is issued have been designated for purposes of Section 265(b)(3) of the Code.

Section 6. Certificate of Proceedings.

6.01 Filing of Resolution. The Clerk or the designee is directed to file with the County Auditor a certified copy of this Resolution and such other information as the County Auditor may require, and to obtain from the County Auditor a certificate stating that the Bond herein authorized has been duly entered on the County Auditor’s register.

6.02 Proceedings. The officers of the Issuer are authorized and directed to prepare and furnish to the USDA and to bond counsel certified copies of all proceedings and records of the Issuer relating to the authorization and issuance of the Bond and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the

Bond as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations of the Issuer as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 Absent or Disabled Officers. In the event of the absence or disability of the Mayor or the Clerk, such officers of the Issuer or members of the Council as in the opinion of the Issuer's attorney may act in their behalf shall, without further act or authorization of the Issuer, execute and deliver the Bond, and do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

Section 7. Refunding, Findings, Prepayment of 2018 Temporary Note.

7.01 Finding. It is found and determined that the proceeds of the Bond and other available funds of the Issuer in the Prior Debt Service Account will be sufficient to prepay all of the principal of and interest on the 2018 Temporary Note on the Redemption Date.

7.02 Notice of Call for Redemption. The 2018 Temporary Note shall be redeemed and prepaid in accordance with the terms of the 2018 Temporary Note, which terms and conditions are approved and incorporated herein by reference. The Clerk or the designee is authorized and directed to forthwith send written notice of call to the registered holders of the 2018 Temporary Note.

7.03 Release. When the principal of the 2018 Temporary Note and all interest thereon have been discharged as provided in this Section, all pledges, covenants and other rights granted by this Resolution to the holder of the 2018 Temporary Note shall cease, except that the pledge of the full faith and credit of the Issuer for the prompt and full payment of the principal and interest on the 2018 Temporary Note shall remain in full force and effect.

7.04 Termination of 2018 Temporary Note Construction Account. Upon payment in full of the 2018 Temporary Note on the Redemption Date, any monies remaining on deposit in the construction account established for the 2018 Temporary Note (the "Construction Account") shall be transferred to the Debt Service Account and the Construction Account shall be terminated.


Section 8. Post-Issuance Compliance Policy and Procedures. The Issuer has been provided with a revised Pre- and Post-Issuance Compliance Policy and Procedures which applies to qualifying obligations to provide for compliance with all applicable federal regulations for tax-exempt obligations or tax-advantaged obligations (collectively, the "Policy and Procedures"). The Issuer hereby approves the revised Policy and Procedures which has been presented to the City Council. The Treasurer is designated to be responsible for post-issuance compliance in accordance with the Policy and Procedures.

Adopted: October 7, 2019



Mayor

ATTEST:



Clerk