CITY OF SELAH, WASHINGTON
ORDINANCE NO. 2148

AN ORDINANCE of the City of Selah, Washington, relating to the sewer system of the City; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of the City's sewer system; declaring the estimated cost thereof as nearly as may be; authorizing the issuance of a sewer revenue bond anticipation note (non-revolving line of credit) in the maximum principal amount of $2,111,000, pending the issuance of a sewer revenue bond authorized herein; creating and adopting certain funds and accounts; specifying the terms and covenants of such note; providing for delivery thereof to Banner Bank; and providing for related matters.

PASSED: December 14, 2021

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* The cover page, table of contents and section headings of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.

FG: 54399241.2
CITY OF SELAH, WASHINGTON

ORDINANCE NO. ___

AN ORDINANCE of the City of Selah, Washington, relating to the sewer system of the City; specifying, adopting and ordering the carrying out of a system or plan of additions to and betterments and extensions of the City’s sewer system; declaring the estimated cost thereof as nearly as may be; authorizing the issuance of a sewer revenue bond anticipation note (non-revolving line of credit) in the maximum principal amount of $2,111,000, pending the issuance of a sewer revenue bond authorized herein; creating and adopting certain funds and accounts; specifying the terms and covenants of such note; providing for delivery thereof to Banner Bank; and providing for related matters.

THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions

The words and phrases set forth in this Ordinance with initial capitalization have the respective meanings ascribed to such words and phrases in this section unless the context clearly requires otherwise.

(a) “Acquisition” or “Acquire” means the purchase, securing, lease, receipt by gift or grant, condemnation, transfer or other acquirement, or any combination thereof.

(b) “Bank” means Banner Bank.

(c) “Bank Offer” means the Bank’s offer to extend a non-revolving line of credit, in the form of a sewer revenue bond anticipation note, to the City, and to accept the Note under the terms and conditions provided in the Bank Offer as further set forth in this Ordinance.

(d) “Bond” means the sewer revenue bond authorized to be issued by Section 4 of this Ordinance.

(e) “City” means the City of Selah, Washington.

(f) “Clerk” means the de facto or de jure Clerk of the City, or other officer of the City who is the custodian of the seal of the City and of the records of the proceedings of the Council, and any successors in functions of such office.

(g) “Code” means the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(h) “Construction Account” means the project account within the Revenue Fund for the purpose of paying Costs of the Project.
(i) "Costs of the Project," or any phrase of similar import, means all or any part designated by the Council as costs of the Project, or interest therein, which costs, at the option of the Council, may include all or any part of the incidental costs pertaining to the Project, including, without limitation: (1) preliminary expenses advanced by the City from funds available for the use thereof, or advanced from any other source, with approval of the Council, or any combination thereof; (2) the costs of making surveys, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries; (3) the Acquisition costs of any properties, rights, easements or other interest in properties, or any licenses, privileges, agreements and franchises; (4) the costs of Acquiring, constructing and installing improvements to the System; (5) the costs of Acquiring and installing equipment necessary for the operation and maintenance of said facilities; (6) the costs of appraising, printing, estimates, advice, services of engineers, architects, financial consultants, attorneys, clerical help or other agents or employees; (7) the costs of contingencies; (8) the costs (including interest costs) of all interim financing for the Project, the costs of issuance, fees, costs of bond counsel, and the costs of registration and authentication of the Note and the Bond and the costs, if any, of rating agencies and of bond insurance; and (9) all other expenses necessary or desirable and appertaining to the Project, as estimated or otherwise ascertained by the Council.

(j) "Council" means the City Council of the City.

(k) "Debt Service Account" means the account of that name within the Revenue Fund for the payment of the principal of and interest on the Note, the Bond and any Future Parity Bonds.

(l) "Determination of Taxability" means receipt by the Registered Owner of written notice of any final determination, decision or decree, all applicable appeals periods with respect to which shall have expired, made by the Internal Revenue Service or by any court of competent jurisdiction to the effect that interest on the Note is includable in gross income for the Registered Owner for federal income tax purposes.

(m) "Draws" shall have the meaning given such term in Section 5(b) of this Ordinance.

(n) "Future Parity Bonds" means any and all revenue bonds of the City hereafter issued, the payment of which, both principal and interest, constitutes a lien and charge upon Net Revenue and Sewer ULID Assessments equal in rank with the lien and charge upon Net Revenue and Sewer ULID Assessments for the payments required to pay and secure the payment of the Bond.

(o) "Gross Revenue" means all of the earnings and revenues received from the operation and maintenance of the System, and earnings from the investment of money on deposit in the various accounts of the System. Gross Revenue also includes all earnings from the investment of money on deposit in the Debt Service Account; and all System connection and capital improvement charges. Gross Revenue does not include: (1) principal proceeds of Future Parity Bonds or any other borrowings, (2) amounts collected in respect of City-imposed utility taxes, (3) earnings or proceeds from any investments in a trust account created to defease or refund revenue obligations of the System or held in a special account for the purpose of paying a rebate to the United States Government under the Code, (4) local improvement district
assessments (including Sewer ULID Assessments), (5) grants, gifts, income and revenue which are restricted or may not legally be pledged for revenue bond debt service, (6) payments received in respect of any bond insurance policy or reserve surety, or insurance or condemnation proceeds used for the replacement of capital projects or equipment, (7) proceeds from the sale of System property; (8) any tax credit subsidy payments; or (9) any revenue from a separate utility system.

(p) "Interest Rate" means a fixed rate of 2.15% per annum.

(q) "Issue Date" means the date the Note is initially delivered to the Bank.

(r) "Letter of Conditions" means the USDA's Letter of Conditions dated June 21, 2021, establishing the conditions under which the USDA would loan money to the City to finance the acquisition, construction and installation of improvements to the System (i.e., the Project), as the same may be amended from time to time.

(s) "Maturity Date" means, unless extended pursuant to Section 6 of this Ordinance, June 30, 2023.

(t) "Mayor" means the de facto or de jure Mayor of the City (including the Mayor pro tempore in the Mayor's absence or disability), or any presiding officer or titular head of the City, and any successors in functions of such office.

(u) "Net Revenue" means Gross Revenue less Operating and Maintenance Expenses.

(v) "Note" means the Sewer Revenue Bond Anticipation Note, 2022 (Non-Revolving Line of Credit) of the City in the maximum principal amount of $2,111,000, which is authorized to be issued by this Ordinance.

(w) "Note Register" means the registration records of the City, maintained by the Note Registrar, on which shall appear the name and address of the Registered Owner of the Note.

(x) "Note Registrar" means (i) the Treasurer, or (ii) upon a determination by the Treasurer that maintenance of the duties of the Note Registrar is no longer convenient, a successor appointed by the Treasurer willing and able to accept the duties of Note Registrar on reasonable and customary terms and authorized by law to serve as authenticating agent, transfer agent, registrar and paying or other fiscal agent of the City with respect to the Note and perform all the duties imposed upon it by this Ordinance.

(y) "Operating and Maintenance Expenses" means all reasonable expenses incurred by the City in causing the System to be operated and maintained in good repair, working order and condition, including general maintenance and administrative costs of the City allocated to the System, but does not include non-cash accounting items (e.g., depreciation, amounts treated as expenses under accounting guidelines with respect to unfunded contributions to pension or other post-employment benefit plans, non-exchange financial guarantees, potential environmental liabilities, or similar items) or capital additions or capital replacements to the System.

(z) "Ordinance" means this Ordinance passed by the Council and approved by the Mayor on December 14, 2021.
(aa) "Project" means the plan of additions to and betterments and extensions of the System as more particularly described in Section 3 hereof.

(bb) "Qualified Tax-Exempt Obligation" shall have the meaning specified in Section 13(b) hereof.

(cc) "RCW" means the Revised Code of Washington.

(dd) "Registered Owner" means the entity or person named as the registered owner of the Note on the Note Register, initially the Bank.

(ee) "Revenue Fund" means the City's existing Sewer Fund, which is an enterprise fund of the City in which Gross Revenue is deposited.

(ff) "Sewer ULID" means any utility local improvement district of the City created for the purpose of financing improvements to the System, and if the water and sewer systems of the City are later combined, any ULID thereafter created for water or sewer improvements, or both.

(gg) "Sewer ULID Assessments" means the assessments levied in any Sewer ULID created pursuant to State law in connection with an improvement to the System financed by the issuance of any Future Parity Bonds, the assessments in which are pledged to be paid into the Debt Service Account, including installments thereof and interest and any penalties thereon.

(hh) "State" means the State of Washington.

(ii) "System" means the existing sewer system of the City, together with all additions thereto and betterments and extensions thereof at any time made or constructed.

(jj) "Taxable Rate" means a fixed rate of 2.72% per annum.

(kk) "Treasurer" means the de facto or de jure Treasurer of the City, and any successors in functions of such office.

(ll) "USDA" means the United States of America, acting through the United States Department of Agriculture, Rural Utilities Service.

Section 2. Findings and Determinations

The Council takes note of the following facts and makes the following findings and determinations:

(a) The City is a municipal corporation and code city duly organized and existing under the laws of the State. Pursuant to chapters 35.67, 35.92 and 35A.80 RCW, among other authorities, the City is authorized to acquire, construct, install, operate and maintain a sewer system (i.e., the System). The City has not combined its sewer system with either its water system or its refuse collection and disposal system. The City is authorized to conduct proceedings and to issue revenue bonds pursuant to chapters 35.41, 35.67, 35.92, 35A.40 and 39.46 RCW, among other authorities.
(b) Pursuant to the terms of the Letter of Conditions, the USDA has offered to make a loan to the City, evidenced by a sewer revenue bond (i.e., the “Bond”) in the maximum principal amount of $2,111,000 to pay costs of carrying out the Project. Chapter 39.50 RCW authorizes cities to issue short-term obligations in anticipation of the receipt of bond proceeds.

(c) It is advisable for the City to acquire, construct and install the Project. In determining the costs of the Project pursuant to RCW 35.41.090, the Council estimates that the total costs of the Project will be at least $2,374,611. It is advisable for the City to provide funds for defraying a portion of the cost of the Project from the proceeds of the sale of a short-term revenue obligation (i.e., the Note) pending the issuance of the Bond.

(d) The Council deems it to be in the best interest of the City that the City borrow money and issue the Note pending the issuance of the Bond for the purpose of providing the funds with which to pay costs of carrying out the Project specified, adopted and ordered to be carried out herein, and the Bank has offered to accept the Note under the terms set forth in this Ordinance.

(e) Pursuant to Ordinance No. 1882, passed by the Council and approved by the Mayor on May 22, 2012, the Council adopted Post-Issuance Compliance Policies and Procedures for Tax-Exempt Bonds. Such procedures remain in effect and have not been repealed, revoked or rescinded.

Section 3. The Project

The City hereby specifies, adopts and authorizes a plan for making certain additions to and betterments and extensions of the System (i.e., the “Project”), including, but not limited to: (i) installing a new 15-inch sewer main in Naches Avenue; (ii) extending the 12-inch main in Fourth Street; (iii) extending the main in North Wenas Road; (iv) extending a sewer main to the park near Naches Avenue and Hill Crest Drive; and (v) installing a new 24-inch sewer main in Railroad Avenue, all as described in the City’s sewer plan, as more particularly described in the plans and specifications to be prepared by the consulting engineers of the City (currently HLA Engineering and Land Surveying, Inc.), and approved by the City. The total cost of the Project is estimated to be at least $2,374,611. The Council may make such changes prior to or during the actual construction of the Project where, in its judgment, it appears advisable.

Section 4. Authorization of the Bond

For the purpose of paying part of the Costs of the Project and retiring the Note, the City shall issue the Bond in the maximum principal amount of $2,111,000. The Bond shall be a special obligation of the City payable from Net Revenue and Sewer ULID Assessments. The Bond shall not be a general obligation of the City. The City’s full faith, credit and resources are not pledged for the payment of the Bond.

Section 5. Purpose, Authorization and Description of the Note

(a) For the purpose of providing the funds with which to pay Costs of the Project pending the issuance of the Bond, the City shall issue and deliver its Sewer Revenue Bond
Anticipation Note, 2022 (Non-Revolving Line of Credit) (i.e., the “Note”), in the maximum principal amount of $2,111,000, pursuant to the terms of this Ordinance. The Note shall be dated the Issue Date; shall mature on the Maturity Date, unless extended pursuant to Section 6 of this Ordinance; shall be issued in fully registered form as to both principal and interest on the Note Register; and shall be numbered R-1, with any additional designation as the Note Registrar deems necessary for purposes of identification.

(b) Upon satisfaction of applicable requirements of the USDA and the conditions described in the Bank Offer, the City may make incremental draws upon the Note (i.e., the “Draws”) one time each month during the term of the Note for the purpose of providing the funds with which to pay Costs of the Project. Draws may be in any dollar amount; provided, that the first Draw shall be in an amount equal to or greater than $51,000. No Draw may exceed the total amount of the costs to be paid from such Draw, and the proceeds of each Draw shall be used immediately to pay those costs. Draws shall be recorded on the Draw Record attached to the Note, or in such other form as the City and the Registered Owner may agree. Draws are not subject to approval by the Registered Owner, but shall be limited to an aggregate principal amount of $2,111,000. The City shall submit to the Registered Owner, with each request for a Draw, an outlay report and written approval from USDA for the release of funds, not less than three days prior to the requested disbursement date (unless the Registered Owner consents to honor a Draw request on less than three days’ advance notice).

(c) Each Draw shall bear interest at the Interest Rate, except as otherwise provided in Section 13(c) of this Ordinance. Interest shall be calculated on a 360-day year of twelve 30-day months, and shall accrue from the date of that Draw on the principal amount of the Draw outstanding. Principal, together with all accrued interest on the Note shall be payable on the final Maturity Date or, if earlier, the date of prior redemption. If the Note is not paid when properly presented for payment on its final Maturity Date or date of prior redemption, the City shall be obligated to pay interest on the Note at the applicable interest rate from and after its maturity or prior redemption date until the Note, both principal and interest, is paid in full or until sufficient money for that payment in full is on deposit in the Debt Service Account, and the City has given the Registered Owner notice that such money is available to make such delinquent payment.

Section 6. Designation of Officer to Make Draws and Extend Maturity Date

The Council has determined it to be in the best interest of the City that the Mayor and the Treasurer, or such other person(s) as they may designate, be and hereby are severally authorized to:

(a) make Draws in the amounts and at the times as either of such officials may determine hereafter, those Draws to be made in accordance with the terms and provisions set forth herein; and

(b) extend the Maturity Date for one additional 18-month period.
Section 7. Appointment of Note Registrar, Registration and Transfer of the Note

(a) The Treasurer is hereby appointed and designated to serve as the Note Registrar. The Note Registrar shall keep, or cause to be kept, at its office, sufficient books for purposes of registering the name, mailing address and taxpayer identification number of the Registered Owner of the Note, and for registering any transfer of Note ownership. The books and records maintained by the Note Registrar for such purpose shall be considered the Note Register for purposes of this Ordinance. The Note Register shall at all times be open to inspection by the City. In addition to maintaining the Note Register, the Note Registrar is authorized and directed to perform the following duties with respect to the Note: (i) to authenticate the Note upon the initial issuance thereof by executing the Certificate of Authentication contained thereon; (ii) to authenticate and deliver any Note that is transferred in accordance with the provisions thereof and this Ordinance; (iii) to serve as the City’s paying agent for the Note; (iv) to imprint on each Note transferred or exchanged pursuant to this Ordinance the name of the Registered Owner, the maximum principal amount of the Note, the interest rate borne by the Note, and the maturity date of the Note; (v) to cancel the Note returned to the Note Registrar upon the payment in full thereof by punching holes through the signatures on the Note and by writing clearly across the face of such Note the word “cancelled”; and (vi) to carry out all of the Note Registrar’s duties otherwise described in this Ordinance and to comply fully with all applicable federal and State laws and regulations respecting the carrying out of those duties. The Note Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Note.

(b) The Note may be assigned or transferred only: (i) in whole; (ii) to the successor to the business and assets of the Bank; (iii) if endorsed in the manner provided thereon and surrendered to the Note Registrar; and (iv) if the transferee provides the Note Registrar with an executed transfer certificate in substantially the form to be attached to the Note. Any such transfer shall be without cost to the Registered Owner or transferee (other than any cost incurred by the Registered Owner or transferee in preparing and delivering such transfer certificate) and shall be noted on the Note Register. The Note Registrar shall not be obligated to assign or transfer the Note during the 15 days preceding any payment or prepayment date.

Section 8. Deposit of Note Proceeds

The principal proceeds received as a result of Draws on the Note shall be paid into the Construction Account and used to pay Costs of the Project. Interest earnings on Draws, if any, shall be retained in the Construction Account and used to pay Costs of the Project.

Section 9. Payment of the Note

The principal of and interest on the Note shall be payable in lawful money of the United States of America and shall be paid by electronic transfer, automatic withdrawal or other method specified by the Registered Owner and allowed by State law. Upon receipt of the final payment of principal of and interest on the Note, whether on the final Maturity Date or upon prepayment, the Registered Owner shall present and surrender the Note to the Note Registrar to be cancelled or destroyed in accordance with law. The City and the Note Registrar may deem and treat the Registered Owner as the absolute owner of the Note for the purpose of receiving payment of principal and interest and for all other purposes, and neither the City nor the Note Registrar shall
be affected by any notice to the contrary other than proper notice of assignment or transfer. All payments shall be applied first to interest and then to principal as of the date actually received by the Registered Owner.

Section 10. Pledge of Bond Proceeds and Net Revenue

The City irrevocably pledges to redeem the Note on the final Maturity Date or date of prior redemption from the proceeds of the Bond. The City hereby pledges Net Revenue to the payment of the Note. The Note shall be payable only from the Debt Service Account as provided herein and shall not be a general obligation of the City, the State or any political subdivision thereof. The City’s full faith, credit and resources are not pledged to the payment of the Note.

Section 11. Prepayment and Redemption Provisions

The City reserves the right and option to prepay and redeem the outstanding principal amount of the Note, in whole, at par plus accrued interest to the date of prepayment, on any business day during the term of the Note. Interest on the Note shall cease to accrue on the date of such prepayment. The City will provide the Registered Owner with written notice of any intended prepayment at least 15 days prior to such prepayment date.

Section 12. Note Form and Execution

(a) The Note shall be prepared in a form consistent with the provisions of this Ordinance and State law, shall be signed by the Mayor and Clerk, either or both of whose signatures may be manual or in facsimile, and shall have the seal of the City (or facsimile reproduction thereof) impressed or printed thereon.

(b) The Note shall not be valid or obligatory for any purpose, or entitled to the benefits of this Ordinance, unless it bears a certificate of authentication manually signed by the Note Registrar stating: “This Note is the fully registered City of Selah, Washington, Sewer Revenue Bond Anticipation Note, 2022 (Non-Revolving Line of Credit), described in the Note Ordinance.” A minor deviation in the language of such certificate shall not void a certificate of authentication that otherwise is substantially in the form of the foregoing. The authorized signing of a certificate of authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this Ordinance.

(c) If any officer whose signature appears on the Note ceases to be an officer of the City authorized to sign notes before the Note bearing such officer’s signature is authenticated or delivered by the Note Registrar or issued by the City, that Note nevertheless may be authenticated, delivered and issued and, when authenticated, delivered and issued, shall be as binding upon the City as though that person had continued to be an officer of the City authorized to sign notes. Any Note also may be signed and attested on behalf of the City by any person who, on the actual date of the signing of the Note, is an officer of the City authorized to sign notes, although such person did not hold the required office on the date of issuance of the Note.
Section 13. Tax Covenants

(a) Preservation of Tax Exemption for Interest on the Note. The City covenants that it will take all actions necessary to prevent interest on the Note from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Note or other funds of the City treated as proceeds of the Note at any time during the term of the Note which will cause interest on the Note to be included in gross income for federal income tax purposes.

(b) Designation of the Note as a "Qualified Tax-Exempt Obligation." The City designates the Note as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code, and makes the following findings and determinations:

(i) The Note does not constitute a "private activity bond" within the meaning of Section 141 of the Code;

(ii) The reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Note is issued will not exceed $10,000,000; and

(iii) The amount of tax-exempt obligations, including the Note, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Note is issued does not exceed $10,000,000.

(c) Determination of Taxability. Upon a Determination of Taxability, the Note shall immediately bear interest at the Taxable Rate.

Section 14. Approval of Bank Offer; Authorization of City Officials

The Bank has presented the Bank Offer, which written Bank Offer is on file with the Clerk and is incorporated herein by this reference. The Council finds that accepting the Bank Offer is in the City's best interest and therefore accepts the same. The Note will be printed at City expense and will be delivered to the Bank in accordance with the Bank Offer, together with the approving legal opinion of Foster Garvey P.C., municipal bond counsel, regarding the Note. The Mayor and the Clerk-Treasurer, or such other person(s) as they may designate, are severally authorized and directed to do everything necessary for the prompt delivery of the Note to the Bank and for the proper application and use of the proceeds of the Draws made pursuant to the Note.

Section 15. Reporting Requirements

For so long as the Note is outstanding and held by the Bank, the City shall provide its annual financial statements/reports, audited financial statements/reports and annual budgets to the Bank along with such additional information as the Bank may reasonably request.
Section 16. Severability; Ratification

If any provision of this Ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond. All actions heretofore taken by the City consistent with the provisions of this Ordinance are ratified, confirmed and approved.

Section 17. Effective Date of Ordinance

This Ordinance shall become effective from and after its passage by the Council, approval by the Mayor, and five days after publication of this Ordinance, or a summary thereof, as required by law. The title of this Ordinance is approved as a summary of this Ordinance.

PASSED by the City Council and APPROVED by the Mayor of the City of Selah, Washington, on December 14, 2021, at a regular open public meeting thereof.

CITY OF SELAH, WASHINGTON

[Signature]
Mayor

ATTEST:

[Signature]
Clerk-Treasurer

(SEAL)
CERTIFICATE

I, the undersigned, the Clerk-Treasurer of the City of Selah, Washington (the "City"), hereby certify as follows:

1. The foregoing Ordinance No. 2148 (the "Ordinance") is a full, true and correct copy of the Ordinance duly passed at a regular meeting of the City Council of the City (the "Council") held on December 14, 2021 (the "Meeting"), as that Ordinance appears on the minute book of the City.

2. The Ordinance will be in full force and effect five days after the publication of its summary in the City's official newspaper;

3. Pursuant to various proclamations and orders issued by the Governor of the State of Washington options were provided for the public to attend the Meeting remotely, including by telephonic access and, as available, internet access, which options provided the ability for all persons attending the Meeting remotely to hear each other at the same time.

4. The Meeting was duly convened and held in all respects in accordance with law, the public was notified of the access options for remote attendance, a quorum of the members of the Council was present throughout the Meeting and a sufficient number of members of the Council so present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand on December 14, 2021.

CITY OF SELAH, WASHINGTON

(Seal)

Clerk-Treasurer

ORD #2148