



CITY OF
REXBURG
America's Family Community

ORDINANCE NO. 766

AN ORDINANCE OF THE CITY OF REXBURG, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A SEWER REVENUE BOND IN THE PRINCIPAL AMOUNT OF \$5,000,000; DESCRIBING THE BOND; SPECIFYING THE DATE, FORM, MATURITY, REGISTRATION, AND AUTHENTICATION OF THE BOND; CONFIRMING THE SALE OF THE BOND; PROVIDING FOR THE COLLECTION AND DISPOSITION OF REVENUE; ESTABLISHING CERTAIN FUNDS AND ACCOUNTS; PROVIDING COVENANTS; AND PROVIDING FOR OTHER MATTERS RELATING THERETO

WHEREAS, the City of Rexburg, Madison County, Idaho (the "City"), is a municipal corporation organized and existing under the laws of Idaho; and

WHEREAS, the City is authorized and empowered by Idaho Code Sections 50-1027 through 50-1042 (the "Revenue Bond Act") to issue revenue bonds to finance all or part of the cost of installation, construction, and acquisition of improvements and betterments to the sewage collection and treatment system of the City; and

WHEREAS, the City Council (the "Council") of the City, by adoption of Ordinance No. 735 on September 2, 1992, ordered a special bond election to be held within the City on November 3, 1992, for the submission to the qualified electors of the City the question of whether or not the City should be authorized to issue its revenue bonds in the principal amount of \$5,000,000 in order to provide funds for certain capital improvements to its sewage wastewater collection and treatment system; and

WHEREAS, the requisite majority of the qualified electors of the City, at said special bond election of November 3, 1992, authorized the issuance of revenue bonds in the amount of \$5,000,000 for such purpose; and

WHEREAS, the Council has determined that the public health, safety, and welfare will be furthered by the sewage improvement project described hereinafter and has further determined to issue sewer revenue bonds of the City, duly authorized by the electors of the City at said election of November 3, 1992, in the principal amount of \$5,000,000, in the form of a single, amortized bond as described hereinafter; and

WHEREAS, Idaho Code Section 50-1036 authorizes the sale of revenue bonds at private sale without advertising the same at competitive bidding.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF REXBURG, IDAHO, as follows:

SECTION I: DEFINITIONS

As used in this Ordinance, the following words shall have the following meanings:

- A. Acquisition or Acquire includes the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the Federal Government, the State, any public body therein or any person or entity, the condemnation, transfer, option to purchase, other contract, or other acquirement, or any combination thereof.
- B. Additional Bonds means additional bonds or other obligations payable from Net Revenues and issued pursuant to Section 15 of this Ordinance.

- C. Bond means the principal amount of \$5,000,000 City of Rexburg Sewer Revenue Bond, Series 1994, herein authorized to be issued in the form of a single fully registered bond without coupons.
- D. Bond Fund means the “City of Rexburg Sewer Revenue Bond Fund” created by Section 12 of this Ordinance.
- E. Bond Register means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bond.
- F. Bond Registrar, for the purpose of the Bond, means the Treasurer.
- G. City means the City of Rexburg, Madison County, Idaho.
- H. Construction Fund means the “City of Rexburg Sewer Project Construction Fund” created by Section 10 of this Ordinance.
- I. City Clerk means the 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 City, or his/her successor in functions, if any.
- J. Cost of Project or any phrase of similar import, means all or any part designated by the Council of the 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, or advanced by the Federal Government, or 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 costs of appraising, printing, estimates, advice, services of engineers, architects, financial consultants, attorneys at law, clerical help, or other agents or employees;
 - (4) The costs of contingencies;
 - (5) The costs of the issuance of the Bond;
 - (6) The costs of funding any short-term financing, bond anticipation notes, and other temporary loans pertaining to the Project and of the incidental expenses incurred in connection with such loans;
 - (7) The costs of any properties, rights, easements, or other interest in properties, or any licenses, privileges, agreements and franchises; and
 - (8) All other expenses necessary or desirable and pertaining to the Project, as estimated or otherwise ascertained by the Council.
- K. Council means the City Council of the City.
- L. Estimated Net Revenues means, for any year, the estimated Revenues of the System for such year less the estimated Operation and Maintenance Expenses for such year, based upon estimates prepared by the City Engineer or an independent engineer, or an independent certified public accountant. In computing Estimated Net Revenues, Revenues of the System may be adjusted as necessary to reflect any changed schedule of rates and charges.
- M. Improvement or Improve includes the extension, widening, lengthening, betterment, alteration, reconstruction, or other major improvement, or any combination thereof, of any properties pertaining to the Project or an interest therein, but does not mean general maintenance or repair.

- N. Loan Agreement means the agreement between the City, as borrower, and the State of Idaho, Department of Health and Welfare, as lender, authorized by Section 21 of this Ordinance.
- O. Mayor means the Mayor of the City, or his/her successor in functions, if any.
- P. Net Revenues means Revenue of the System after the deduction of Operation and Maintenance Expenses.
- Q. Operation and Maintenance Expenses or any phrase of similar import means all reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining, and repairing the System or of levying, collecting, and otherwise administering the Net Revenues for the payment of the Bond; and the term includes (except as limited by contract or otherwise limited by law) without limiting the generality of the foregoing:
- (1) Engineering, auditing, reporting, legal, and other overhead expenses of the various City departments directly relating and reasonably allocable to the administration of the System;
 - (2) Fidelity bonds and property and liability insurance premiums appertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining thereto;
 - (3) Payments to pension, retirement, health, and hospitalization funds and other insurance;
 - (4) Any taxes, assessments, excise taxes, or other charges which may be lawfully imposed on the City, the System, revenues therefrom, or any privilege in connection with their operation;
 - (5) The reasonable charges of the bond registrar, fiscal or paying agent, commercial bank, trust bank, or other depository bank pertaining to the Bond issued by the City or pertaining to the Project, if any;
 - (6) Contractual services, professional services, salaries, other administrative expenses, and the cost of materials, supplies, repairs, and labor, pertaining to the issuance of the Bond and to the System; and
 - (7) All other administrative, general, and commercial expenses.
- R. Ordinance means this Ordinance No.766, adopted on December 7, 1994, and is also referred to as the “Bond Ordinance.”
- S. Project means the sewage treatment system improvement project described in Section 2 hereof and consisting generally of the construction and acquisition of certain capital improvements and betterments to the sewage collection and treatment system of the City.
- T. Registered Owner initially means the State of Idaho, Department of Health and Welfare, its successors or assigns, and includes any subsequent transferee or purchaser of the Bond.
- U. Reserve Fund means the City of Rexburg Sewer Revenue Bond Reserve Fund created by Section 13 of this Ordinance.
- V. Revenue Fund means the “City of Rexburg Sewer Revenue Fund,” created by Section 11 of this Ordinance.
- W. Revenue of the System means all revenues received by the City from its System and may include, at the discretion of the City, moneys derived from one, all, or any combination of revenue sources pertaining to the System, including, without limitation, rates, charges, rents, fees, and any other income derived from the operation or ownership of, the use of services of, or the availability of or services pertaining to, or otherwise derived in connection with, the System or all or any part of any property pertaining to the System.
- X. System means the sewage wastewater collection and treatment system of the City, as it now exists, including its assets, real and personal, tangible and intangible, and as it may later be added to, extended, and improved, and shall include buildings, structures, utilities, or other income producing sewer facilities from the operation of or in connection with which the revenues of the payment of the Bond to be issued hereunder will be derived, and the lands appertaining thereto, including, without limitation, any Improvement to be acquired with the proceeds of the Bond.

- Y. Treasurer means the Treasurer of the City, or his/her successor in functions, if any.

SECTION II: THE PROJECT

- A. Project Description. The sewer system improvement project consists generally of the renovation of the existing sewage collection and treatment facilities of the City, including replacement of the existing sewage treatment lagoon facilities with a mechanical sewage treatment system, together with related improvements, engineering and legal fees, administrative costs, and all other costs incidental thereto (the "Project")
- B. Project Changes. The Council may make changes in the above-described plans prior to or in the course of actual construction, provided such changes are found necessary and desirable by the Council and that such changes do not substantially affect or alter the plans or the cost of the Project.
- C. Costs. \$5,000,000 of the Cost of Project will be paid from the issuance and sale of the Bond, hereinafter defined, authorized to be issued at a special election held within said City on November 3, 1992. Any balance will be realized from other legally available funds of the City.

SECTION III: THE BOND

The Bond, designated "City of Rexburg Sewer Revenue Bond, Series 1994" (the "Bond") , shall consist of a single, transferable revenue bond without coupons, shall be issued in fully registered form, shall be dated as of the date of its delivery, shall mature fifteen (15) years from its date, shall be in the total principal sum of \$5,000,000, shall bear interest on the unpaid balance from the date of the Bond until paid, at the rate of four percent (4.0%) per annum, and shall be substantially in the form set forth in Exhibit "A" which is annexed hereto and by reference made a part of this Ordinance.

The Bond shall be payable in equal semiannual installments of principal and interest, with the first installment of principal and interest being due six months from the date of delivery of the Bond, and semiannually each six months thereafter until maturity. The final semiannual installment may be in such greater or lesser amount as is necessary to fully pay said Bond. The sale of the Bond to the State of Idaho, Department of Health and Welfare (hereinafter the "Registered Owner"), is hereby authorized and approved.

The Treasurer is hereby appointed as the Bond Registrar, transfer agent, and paying agent for the Bond. The ownership of the Bond shall be entered in the Bond Register maintained by the Treasurer, and the City may treat the person listed as owner in the Bond Register as the owner of the Bond for all purposes. The Bond may be transferred or exchanged only upon said bond register by surrender thereof to the Treasurer with written instructions satisfactory to the Treasurer, signed by the Registered Owner or his attorney in fact and guaranteed or witnessed in a manner satisfactory to the Treasurer, and a new fully registered Bond in a like denomination shall be executed by the City and registered in the manner hereinafter provided, and delivered to the new Registered Owner. No Bond not so executed, registered, and delivered shall be entitled to any rights under this Ordinance. This paragraph is intended to provide the system of registration required by Chapter 9, Title 57, Idaho Code.

SECTION VI: EXECUTION

The Bond shall be executed in the name of the City, shall be signed by the manual signature of the Mayor, countersigned by the manual signature of the Treasurer, attested by the manual signature of the Clerk, and authenticated by the seal of the City affixed thereto.

In case any of the officers who shall have signed or counter- signed the Bond shall cease to be such officer or officers of the City before the Bond so signed or countersigned shall have been authenticated, delivered, or issued by the City, the Bond may nevertheless be authenticated, delivered, and issued and, upon such authentication, delivery, and issue, shall be as binding upon the City as though those who signed and countersigned the same had continued to be such officers of the City. The Bond may also be signed and countersigned on behalf of the City by such persons as at the actual date of execution of the Bond shall be the proper officers of the City although at the original date of the Bond any such person shall not have been such officer of the City.

SECTION V: PLACE AND MANNER OF PAYMENT

Principal of the Bond and interest thereon shall be payable in lawful money of the United States of America, to the Registered Owner thereof, at the address of such Registered Owner as shown on the registration records of the City, or at such other address as designated in writing to the City by the Registered Owner.

SECTION VI: PREPAYMENT

The City hereby reserves the right, with the prior written approval of the Registered Owner, to prepay, on any payment date, the principal amount outstanding, in whole or, in the manner hereinafter provided, in part, on any principal and interest payment date.

Prepayments shall be made on any interest payment date, and partial prepayments shall be in the amount of \$1,000.00 or multiples thereof. No partial prepayment shall extend or postpone the due date of any subsequent installment. Any prepayment shall be made without penalty, additional interest, or charges.

Notice of any such intended prepayment shall be mailed by certified mail to the Registered Owner of the Bond at its address appearing on the registration records of the City, or at such other address as designated in writing to the City by the Registered Owner for the payment of regular installments, at least thirty (30) days prior to the prepayment date.

SECTION VII: DEFEASANCE

In the event that money and/or government obligations, maturing or having guaranteed redemption prices at the option of the owner at such time or times and bearing interest to be earned thereon in such amounts as are sufficient (together with any resulting cash balances) to redeem and retire part or all of the Bond in accordance with its terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund or Reserve Fund for the payment of the principal of and interest on the Bond so provided for, and the Bond and interest accrued thereon shall then cease to be entitled to any lien, benefit, or security of this Ordinance, except the right to receive the funds so set aside and pledged, and the Bond and interest accrued thereon shall no longer be deemed to be outstanding hereunder.

SECTION VIII: CHARGES

The City has established, may from time to time revise, and shall maintain and collect sewer rates and charges for furnishing the services of the System to its customers, which rates and charges are, and shall continue to be, uniform as to all persons or properties which are of the same class, which rates and charges shall be collected from the users thereof.

SECTION IX: PLEDGE OF REVENUES

The Net Revenues of the System are hereby pledged for the payment of the Bond, and shall be used and applied in the order of priority provided in Section 11 of this Ordinance. The City shall establish, revise, maintain, and collect charges sufficient, together with other net revenues of the City's sewer system and other revenues received, after taking into consideration anticipated delinquencies, to provide Net Revenues equal to not less than 1.1 times the sum of the combined aggregate amount of the principal of and interest on the Bond, which shall become due the next succeeding fiscal year.

SECTION X: THE CONSTRUCTION FUND

There is hereby created, a special fund and account known as the "City of Rexburg Sewer Project Construction Fund" (the "Construction Fund"), into which shall be deposited all of the proceeds of the sale of the Bond, to be used and applied for the payment of a portion of the cost and expense of the construction and installation of the Project, in accordance with the Loan Agreement, including the payment of the principal of and interest on all outstanding bond anticipation notes or other interim financing, if any. Any interest earnings on moneys invested from the Construction Fund shall remain in and be used for the purposes of the Construction Fund. The City's share of any liquidated damages or other moneys paid by defaulting contractors or their sureties will be deposited into the Construction Fund to assure the completion of the Project.

When the Project has been completed and all costs related thereto have been paid in full, any balance remaining in the Construction Fund shall be deposited into the Bond Fund described in Section 12 of this Ordinance.

SECTION XI: THE REVENUE FUND

There is hereby created a fund known as the “City of Rexburg Sewer Revenue Fund” (the “Revenue Fund”), which shall be maintained by the Treasurer and into which the Revenue of the System shall be deposited forthwith upon its receipt.

- A. Use of Revenues. The Revenue of the System shall be used for payment of the following obligations in the following order of priority:
- (1) First Charge and Lien: the costs of Operation and Maintenance Expenses.
 - (2) Second Charge and Lien: the principal of and interest on the Bond by payment into the Bond Fund.
 - (3) Third Charge and Lien: to maintain the Reserve Fund as provided in Section 13 of this Ordinance; and
 - (4) To administer surplus funds.
- B. Surplus Funds: Funds remaining in the Revenue Fund, after having been applied to the purposes provided in this Section, shall constitute surplus funds and may be used for the purposes set forth in Section 14 of this Ordinance.

SECTION XII: THE BOND FUND

There is hereby created a special fund known as the “City of Rexburg Sewer Revenue Bond Fund” (the “Bond Fund”), into which shall be deposited, from Net Revenues of the System, the following amounts:

- A. Such amounts, in approximately equal monthly installments from the Revenue Fund, as will cause to be accumulated, not less than ten (10) days prior to each semiannual payment date, the amount sufficient to make each semiannual principal and interest payment on the Bond as the same becomes due. The moneys herein allocated shall be used solely to pay currently maturing installments of principal and interest on the Bond.
- B. If the City for any reason shall fail to accumulate within the Bond Fund sufficient moneys to make the required semiannual principal and interest payment on the Bond as the same becomes due, then an amount equal to the deficiency shall be deposited into the Bond fund, not less than ten (10) days prior to such payment date, from the Reserve Fund, described hereinafter.

SECTION XIII: RESERVE FUND

- A. Deposits. There is hereby created a special fund and account, separate from all other funds and accounts of the City, to be known as the “City of Rexburg Sewer Revenue Bond Reserve Fund” or other similar designation (the “Reserve Fund”), which shall be maintained by the Treasurer as a debt service reserve fund for the Bond. There shall be accumulated in the Reserve Fund within five (5) years from the date of the Bond, in approximately equal annual deposits, an amount equal to one year’s principal and interest requirements on the Bond. The sum so accumulated shall be maintained as a debt service reserve fund for the Bond, until the Bond has been paid in full. No proceeds of the Bond shall be deposited into the Reserve Fund.
- B. Deficiencies or Withdrawals. Whenever any moneys are withdrawn from the Reserve Fund to pay the principal of or interest on the Bond, or if a deficiency exists therein, the amount so withdrawn or the amount of such deficiency shall be restored within a period of one (1) year from the date of such deficiency by deposits from Net Revenues until there has been restored therein the gross amount provided heretofore in subdivision A of this Section.
- C. Refunding. In the event refunding bonds are ever issued, the amount set aside into the Reserve Fund to secure the payment of the Bond may be used to retire bonds or may be held in the Reserve Fund to secure payment of the refunding bonds issued, to refund the outstanding refunding bonds, or may be held in the Reserve Fund to secure the payment of

any other issue or series of bonds payable out of the Bond Fund and issued on a parity with the Bond.

- D. Investments. All moneys in the Reserve Fund may be kept in cash or deposited in institutions permitted by law in an amount in each institution not greater than the amount insured by any department or agency of the United States Government, or may be invested and reinvested in any legal investment permitted for City moneys maturing not later than the last maturity date of any outstanding bonds.

SECTION XIV: SURPLUS FUNDS

Funds remaining in the Revenue Fund after having been applied to or designated funds for the purposes provided in Section 11A of this Ordinance shall constitute surplus funds and may be used for any of the following purposes:

- A. To pay the costs of unusual or extraordinary maintenance of or repair to the System;
- B. To pay the principal of and interest on any subordinate lien obligations which may have been issued to provide sewage facilities in or for the City;
- C. To improve, extend, enlarge, or replace any sewage facilities;
- D. To acquire or construct additional sewage facilities in or for the City;
- E. To prepay the principal, interest, and any costs of the Bond; and
- F. For any other lawful purpose.

SECTION XV: ADDITIONAL BONDS OR OTHER OBLIGATIONS

- A. Limitation Upon Issuance of Parity Obligations. Nothing contained in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other additional obligations payable from the Net Revenues on a parity with, but neither prior nor superior to, the lien of the Bond herein authorized; provided, however, that before any such additional parity bonds or other additional parity obligations are authorized or actually issued:
- (1) The City is not, and has not been, in default as to any payments required by the provisions of this Ordinance for a period of not less than twelve (12) months immediately preceding the issuance of such additional parity bonds or other additional parity obligations, and there is no deficiency in the Bond Fund or Reserve Fund.
 - (2) The principal of and interest on the Additional Bonds shall be payable from the Bond Fund and further secured by the Reserve Fund, the Reserve Requirement for which shall be increased in proportion to the principal amount of the Additional Bonds being issued.
 - (3) Prior to the delivery of any Additional Bonds, the City shall have on file at the office of the City Clerk a certificate of a licensed professional engineer, who may be the City Engineer, or a certificate of an independent certified public accountant, dated prior to the authorization of such Additional Bonds, showing that the Estimated Net Revenues, determined and adjusted as hereafter provided, for each fiscal year after the issuance of such Additional Bonds, will equal at least 1.10 times the amount required for the payment of the average annual principal of and interest on the Bond and any Additional Bonds then outstanding, plus the Additional Bonds proposed to be issued.
 - (4) In determining Estimated Net Revenues, the Net Revenues for the past twelve (12) consecutive months immediately preceding the year of the proposed Additional Bonds shall be adjusted by such engineer or accountant to take into consideration changes in Net Revenues estimated to occur under one or more of the following conditions for each year after delivery of the Additional Bonds for so long as the Bond and any Additional Bonds, including the Additional Bonds to be issued, shall be outstanding.
 - a. any increase or decrease in Net Revenues which would result if any change in rates or charges adopted prior to the date of such certificate and subsequent to

the beginning of such twelve (12) month period had been in force during the full twelve (12) month period;

- b. any increase or decrease in Net Revenues estimated by such engineer or accountant to result from any additions, betterments, and improvements to and extension of any facilities of the System which (i) become fully operational during such twelve (12) month period, (ii) were under construction at the time of such certificate, or (iii) will be constructed from the proceeds of the Additional Bonds to be issued; and/or
- c. the additional Net Revenue which would have been received if any customers added to the System prior to the date of such certificate and subsequent to the beginning of such twelve (12) month period were customers for the entire period.

Such engineer or accountant shall base his or her certificate upon, and his certificate shall have attached thereto, audited financial statements of the water System (unless such an audit is not available within such twelve-month period) showing income and expenses for the period upon which the same is based.

- B. Parity Bonds to Complete Project. In the event grant funds, plus the proceeds of the Bond provided for in this Ordinance, are insufficient to complete the Project, then parity bonds may be issued to complete the Project, and the restrictions set forth in this Section pertaining to the issuance of parity bonds shall not apply.
- C. Subordinate Lien Bonds. No provision of this Ordinance or of any instrument pertaining thereto shall be deemed to limit or restrict the power of the City to issue bonds, notes or warrants, or to make pledges of the revenues which shall be subordinate as to the lien of the Bond and which shall provide for compliance with the current provisions hereof prior to the application of any funds to said subordinate purpose.
- D. Refunding. The restrictions with respect to the issuance of parity obligations shall not apply if such additional parity bonds proposed to be issued are for the sole purpose of refunding outstanding sewer revenue bonds.

SECTION XVI: INVESTMENTS

Surplus funds in any of the Funds set forth in this Ordinance may be invested in securities as permitted by law.

SECTION XVII: GENERAL COVENANTS

For the protection and security of the Bond, it is covenanted and agreed to and with the Registered Owner of the Bond from time to time, that the City will perform the following covenants:

- A. Maintain Corporate Status. The City will maintain its identity as a municipal corporation and will make no attempt to cause its corporate status to be abolished.
- B. Budget Laws. The City will comply with applicable state budget laws in preparing its annual budget and in keeping accounts and records.
- C. Complete Project. It will complete the construction of the Project with all practical dispatch and in a sound and economical manner.
- D. Operate System. It will operate the System in an efficient and economical manner and prescribe, revise, and collect such charges in connection therewith so that the services, facilities, and properties of the System may be furnished at the lowest possible cost consistent with sound economy and prudent management.
- E. Good Repair. It will operate, maintain, preserve, and keep the System and every part hereof in good repair, working order, and condition.

- F. Preserve Security. It will preserve and protect the security of the Bond and the rights of the Registered Owner thereof.
- G. Collect Revenues. It will collect and hold in trust the revenues and other funds pledged to the payment of the Bond and apply such revenue or other funds only as provided in this Ordinance.
- H. Service Bond. It will pay and cause to be paid punctually the principal of the Bond and the interest thereon on the date or dates and at the place or places and in the manner mentioned in the Bond, and in accordance with this Ordinance.
- I. Pay Claims. It will pay and discharge any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the Revenue of the System, or any part of said Revenue of the System, or any funds in the hands of the Treasurer, prior or superior to the lien of the Bond or which might impair the security of the Bond, to the end that the priority and security of the Bond shall be fully preserved and protected.
- J. Encumbrances. It will not mortgage or otherwise encumber, sell, lease, or dispose of the System or any part thereof, nor enter into any lease or agreement which would impair or impede the operation of the System or any part thereof necessary to secure adequate revenues for the payment of the principal of and interest on the Bond, nor which would otherwise impair or impede the rights of the Registered Owner of the Bond with respect to such revenues of the operation of the System without provisions for the retirement of the Bond then outstanding from the proceeds thereof.
- K. Insurance. It will procure and keep in force insurance upon all buildings and structures of the System and the machinery and equipment therein, which are usually insured by entities operating like property, in good and responsible insurance companies. The amount of the insurance shall be not less than the full replacement cost thereof and shall be such as may be required to adequately protect it and the Registered Owner of the Bond from loss due to any casualty, and in the event of any such loss, the proceeds shall be used to repair or restore the System or for the payment of the Bond issued under this Ordinance.
- L. Fidelity Bonds. It will procure suitable fidelity bonds covering all of its officers and other employees charged with the collection and disbursement of revenues from the System.
- M. Engineers. It will employ consulting engineers of acknowledged reputation, skill, and experience in the improvement and operation of the System for any unusual or extraordinary items of maintenance, repair, or betterments as shall be required from time to time, all reports, estimates, and recommendations of such consulting engineers to be filed with the Clerk and furnished to the Registered Owner of the Bond issued hereunder, upon request.
- N. Accounts. It will establish and maintain proper methods of accounting and bookkeeping, keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System, and furnish complete operating and income statements to the Registered Owner upon request.
- O. Delinquencies. It will not furnish sewer service to any customer whatsoever free of charge, and it shall not later than sixty (60) days after the end of each calendar year, take such legal action as may be reasonable to enforce collection of all collectible delinquent accounts.

SECTION XVIII: SPECIAL COVENANTS

The City further covenants and agrees:

- A. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the Bond, and any serial bond to which it may be converted, shall be issued and remain in fully registered form in order that interest thereon be excluded from gross income of the owner or owners for federal income tax purposes. The City covenants and agrees that it will take no action to permit the Bond, or any serial bonds to which it may be converted, to be issued in or converted to bearer or coupon form.

- B. The Bond is a qualified tax-exempt obligation within the meaning and for the purposes of Section 265W) (3) of the Code, and the City does not reasonably anticipate that it will designate more than \$10,000,000, including the Bond, as qualified tax-exempt obligations during the calendar year 1994.
- C. None of the proceeds of the Bond will be used directly or indirectly (i) to make or finance loans to persons or (ii) in any trade or business carried on by any person (other than use as a member of the general public). For purposes of the preceding sentence, the term "person" does not include a government unit other than the United States or any agency or instrumentality thereof, and the term "trade or business" means any activity carried on by a person other than a natural person. The City further covenants and agrees to take no action which would cause the Bond to be a "private activity bond," nor will it omit to take any action necessary to prevent the Bond from becoming a "private activity bond," within the meaning of Section 141 of the Code.
- D. The City has general taxing powers. The Bond is not a "private activity bond" within the meaning of Section 141 of the Code. 959j or more of the net proceeds of the Bond are to be used for the local governmental activities of the City. The City has no subordinate entities. The City has not issued, and does not reasonably anticipate that it will issue, tax-exempt obligations in the calendar year 1994 in a face amount which exceeds \$5,000,000. Accordingly, under Section 148(f) (4) (C) of the Code, the City is not required to pay rebates to the United States under Section 148(f) of the Code.
- E. The Mayor, Clerk, and Treasurer, and other appropriate officials of the City, or any one or more of such officials, as may be appropriate, are each hereby authorized and directed to execute, on behalf of the City, such certificate or certificates as shall be necessary to establish that the Bond is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated thereunder, and to establish that interest on the Bond is not and will not become includable in the gross income of the owners of the Bond under the Code and applicable regulations. The City covenants and agrees that no use will be made of the proceeds of the Bond, or any funds of the City which may, pursuant to Section 148 of the Code and applicable regulations, be deemed to be proceeds of the Bond, which would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The City further covenants to comply throughout the term of the Bond with the requirements of Section 148 of the Code and the regulations promulgated thereunder in order to prevent the Bond from becoming an "arbitrage bond."
- F. The City will comply with the information reporting requirements of Section 149(e) of the Code.
- G. None of the proceeds of the Bond will be used to reimburse the City for capital expenditures made prior to the date of delivery of the Bond unless the City, not later than 60 days after the payment of such expenditure, shall have adopted an official intent resolution as provided by Section 1.150-2 of the Treasury Regulations.

SECTION XIX: AMENDMENTS

- A. The City from time to time and at any time may adopt an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes:
- (1) To add to the covenants and agreements of the City in this Ordinance, other covenants and agreements thereafter to be observed, which shall not adversely affect the interest of the Registered Owner of the Bond, or to surrender any right or power herein reserved.
 - (2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting, or supplementing any defective provisions contained in this Ordinance, or any ordinance authorizing future bonds in regard to matters or questions arising under such ordinances as the Council may deem necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect, in any material respect, the interest of the Registered Owner of the Bond.

Any such supplemental ordinance may be adopted without the consent of the Registered Owner of the Bond at any time outstanding, notwithstanding any of the

provisions of subsection B of this Section.

- B. With the consent of the Registered Owner of not less than 75% in aggregate principal amount of the Bond at the time outstanding, the Council may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:
- (1) Extend the fixed maturity of the Bond, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, if applicable, without the consent of the Registered Owner of the Bond so affected; or
 - (2) Reduce the aforesaid percentage of the Registered Owner required to approve any such supplemental ordinance, without the consent of the Registered Owner of the Bond then outstanding.

It shall not be necessary for the consent of the Registered Owner under this subsection B to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

- C. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations of the City under this Ordinance and the Registered Owner of the Bond outstanding hereunder shall thereafter be determined, exercised, and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.
- D. Any Bond executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new bonds so modified as to conform, in the opinion of the Council, to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owner of any affected Bond then outstanding, upon surrender for cancellation of such Bond.

SECTION XX: VALIDITY OF ISSUANCE

The Bond is issued pursuant to the Idaho Revenue Bond Act, being Idaho Code Sections 50-1027 through 50-1042. This recital is conclusive evidence of the validity of the Bond and the regularity of its issuance.

SECTION XXI: REGISTERED OWNER'S REMEDIES – RECEIVER

By action or suit in equity, the Registered Owner or subsequent owners of the Bond may, in the event of a material violation of any of the foregoing covenants, cause the appointment of a receiver, which receiver may enter and take possession of the System and any Net Revenues for the payment of the Bond, prescribe fees to be derived from the System, and collect, receive, and apply all Net Revenues of other moneys pledged for the payment of the bond in the same manner as the City might do in accordance with the obligations of the City.

SECTION XXII: LOAN AGREEMENT

The Loan Agreement between the City, as borrower, and the State of Idaho, Department of Health and Welfare, as lender, as set forth in Exhibit “B” which is annexed hereto and by reference incorporated herein, is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the same on behalf of the City.

SECTION XXIII: ORDINANCE A CONTRACT

The provisions of this Ordinance shall constitute a contract between the City and the Registered Owner so long as the Bond hereby authorized remains unpaid. In the event of conflict between this Ordinance and the Loan Agreement referred to above, the Loan Agreement shall, to

the extent permitted by law, control.

SECTION XXIV: DETERMINATION

The Council does hereby find, determine, and declare that it is essential to the public interest, welfare, and convenience of the City and the inhabitants thereof to undertake the Project and to construct the improvements, with said Project being paid for in part by the issuance of the Bond in conformity with the Idaho Code.

SECTION XXV: SEVERABILITY

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond.

SECTION XXVI: REPEALER

All prior ordinances inconsistent herewith are hereby repealed and shall, to the extent of such inconsistency, have no further force or effect.

SECTION XXVII: PUBLICATION

This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto as Exhibit "C," shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

DATED this 7th day of December, 1994.

CITY OF REXBURG
Madison County, Idaho

By _____
Nile L. Boyle, Mayor

ATTEST:

Rose Bagley, City Clerk

(SEAL)

UNITED STATES OF AMERICA

Registered
No. ONE

Registered
\$5,000,000

STATE OF IDAHO

County of Madison

CITY OF REXBURG
SEWER REVENUE BOND, SERIES 1994

KNOW ALL MEN BY THESE PRESENTS: That the City of Rexburg, Madison County, Idaho, for value received, hereby promises to pay from the special fund hereinafter described and in the manner hereinafter set forth, and not otherwise, to THE STATE OF IDAHO, DEPARTMENT OF HEALTH AND WELFARE, the registered owner hereof, the principal sum of

FIVE MILLION DOLLARS

(\$5,000,000), together with interest on the unpaid balance at the rate of four percent (4.0%) per annum. Said principal and interest shall be paid in the following installments on the following dates: Principal and interest in the amount of \$_____ shall be due on the ____ day of _____, and semiannually on each _____ and _____ thereafter for a period of fifteen (15) years from the date of the Bond. The final installment may be in such greater or lesser amount as is necessary to pay the balance of principal and interest then due.

This Bond shall be registered as to principal and interest in the name of the original owner and any subsequent owners in a registration book in the office of the City Treasurer, who shall be the Bond Registrar. This Bond is transferable only upon said book, by notation thereon, by the registered owner hereof in person or by its attorney duly authorized in writing.

Both principal of and interest on this Bond shall be payable in lawful money of the United States of America, to the registered owner. Any owner of this Bond subsequent to its original owner is hereby placed on notice of all payment of both principal of and interest on this Bond prior to its transfer to him and all subsequent owners hereof hereby acknowledge that they have ascertained the actual unpaid principal amount of this Bond as of the date of transfer to them and hereby release the City from all obligations as to all principal and interest paid by the City prior to such date.

The City has reserved the right, with the prior written approval of the Registered Owner, to prepay the principal amount outstanding, in whole or, in the manner hereinafter provided, in part, on any payment date. Prepayments shall be made on the date, at the place, and in the manner provided herein for making regularly scheduled installments, and partial prepayments shall be in the amount of \$1,000.00 or multiples thereof. No partial prepayment shall extend or postpone the due date of any subsequent installment. Any such prepayment shall be made without penalty, additional interest, or charges.

Notice of any such intended prepayment shall be mailed by certified mail to the registered owner of the Bond at the address appearing on the registration records of the City, or at such other address as designated in writing to the City by the registered owner, at least thirty (30) days prior to the prepayment date. Interest on this Bond shall cease to accrue as to the amount of principal being prepaid after the date fixed for prepayment if notice has been properly given and funds equal to the amount of prepayment have been deposited at the place of payment at that time.

This Bond is issued for the purpose of paying a portion of the cost of the construction and installation of improvements and betterments to the City's sewage system (the "Project"), pursuant to the Idaho Revenue Bond Act (being Idaho Code Sections 50-1027 through 50-1042), and the Municipal Bond Law of the State of Idaho (being Idaho Code, Title 57, Chapter 2) and also pursuant to Ordinance No. 766, adopted on December 7, 1994 (the "Bond Ordinance"), and a special election held within the City on November 3, 1992.

This Bond creates a lien and charge upon the Net Revenues of the City's sewer System (as said capitalized terms are defined in the Bond Ordinance) as defined in the Bond Ordinance, superior to all other charges of any kind and nature, except the charges necessary to pay the principal of and interest on any future parity bonds. This Bond is a limited obligation of the City and

is payable as to principal and interest solely from a special fund, designated the "City of Rexburg Sewer Revenue Bond Fund" (the "Bond Fund"), which Bond Fund was created by the Bond Ordinance. For a more particular description of said Bond Fund, the revenues to be deposited therein, and the nature and extent of the security afforded thereby, reference is made to the provisions of the Bond Ordinance pursuant to which this Bond is issued, and such Bond Fund will be maintained.

This Bond does not now and shall never constitute an indebtedness of the City within the meaning of any State Constitutional provision or statutory limitation, nor a charge against the general credit or taxing powers of the City.

The City has covenanted with the registered owner of the Bond to keep and perform all covenants and agreements contained in the Bond Ordinance, and the City will establish, maintain, collect, and account for rates and charges for service furnished by or through the System, including all extensions and improvements thereto hereafter constructed or acquired by the City, sufficient to pay the principal of and interest on the Bond as they fall due, provided such rates must be reasonable rates for the type, kind, and character of the services rendered.

IT IS HEREBY CERTIFIED, RECITED, and DECLARED that all conditions, acts, and things essential to the validity of this Bond do exist, have happened, and have been done, and that every requirement of law affecting the issue hereof has been duly complied with; that the Net Revenues to be derived from the operation of the System, including any future improvements, additions, or extensions thereto, have been and are hereby pledged and will be set aside into the Bond Fund, in amounts sufficient for the payment of principal of and interest on this Bond.

IN WITNESS WHEREOF, the City of Rexburg, Madison County, Idaho, under its corporate seal, has caused this Bond to be signed in its corporate name by its Mayor, countersigned by the Treasurer thereof, and attested by the City Clerk, as of the 7th day of December 1994.

CITY OF REXBURG
Madison County, Idaho

Nile L. Boyle, Mayor

Treasurer

ATTEST:

Rose Bagley, City Clerk

(SEAL)

REGISTRATION CERTIFICATE

(No writing to be placed herein except by the Bond Registrar)

This Bond shall be payable only to the order of the registered owner or its legal representative.

Date of
Registration

Name and Address of
Registered Owner

Signature of
Bond Registrar

State of Idaho, Department
of Health and Welfare, 450 West
State Street, Boise, Idaho 83720

STATE OF IDAHO
DEPARTMENT OF REALTE AND WELFARE
LOAN OFFER, ACCEPTANCE AND CONTRACT
FOR WASTEWATER TREATMENT FACILITY
DESIGN AND CONSTRUCTION

SECTION I. INTRODUCTION

The State of Idaho (State) is authorized by the Water Pollution Abatement Act (Act), Title 39, Chapter 36 of the Idaho Code, to make loans from the Wastewater Treatment Facility Loan Account (Account) to assist municipalities in the construction of wastewater treatment facilities. The Idaho Board of Health and Welfare, through the Department of Health and Welfare (Department), is authorized to administer the Act. The Department has determined that the City of Rexburg (Applicant) has established eligibility for a loan under the terms of the Act and the Rules and Regulations for Administration of Wastewater Treatment Facility Loans, Title 1, Chapter 12, Rules and Regulations of the Department (Regulations).

A completed application for a Wastewater Treatment Facility Design and Construction Loan has been submitted to the Department by the Applicant. The Department hereby offers a loan to the Applicant according to the terms and conditions contained in this document and the Regulations.

SECTION II. DESCRIPTION OF PROJECT

This loan offer is for design and construction of the following project:

- A. Loan Project Number: 1892-OS
- B. Project Description:

Upgrade the wastewater treatment facility from a lagoon system to an oxidation ditch.

- C. Terms: \$5,000,000 at 4% interest, to be repaid in semi-annual payments in 15 years

- D. Project Financing Under Terms of this Offer (in dollars):

- 1. State Revolving Fund (SRF) Loan \$5,000,000
- 2. Block Grant 500,000
- 3. Local Funds 1,444,020
- 4. Total Project Cost \$6,944,020

- E. Estimated Project Budget

	<u>Loan</u>	<u>Other</u>	<u>Total</u>
1. Administration	\$40,322	\$15,678	\$56,000
2. Engineering Fees	461,761	179,534	641,295
3. Equipment	—0—	—0—	—0—
4. Construction	4,497,917	1,748,808	6,246,725
5. Contingency	—0—	—0—	—0—
6. Other	—0—	—0—	—0—
7. Total	5,000,000	1,944,020	6,944,020

SECTION III. GENERAL CONDITIONS

This offer may only be accepted by signature by an authorized representative of the Applicant. Upon acceptance by the Applicant, this offer shall become a loan contract and the Applicant shall become a Borrower. The effective date of this loan contract shall be the date of acceptance by the Borrower after this loan contract has been duly authorized by ordinance of the Borrower. By accepting this offer, the Borrower agrees to all terms and conditions set forth in this document and the Regulations:

The Borrower agrees:

- A. To not transfer, assign or pledge any beneficial interest in this contract to any other person or entity without the prior written consent of the Director of the Department. To not enter into sale, lease or transfer of any of the property related to the project. To not make any additional material encumbrances to the project without the prior written consent of the Director of the Department. To not incur any liabilities that would materially affect the funds pledged to repay this loan without the prior written consent of the Director of the Department. To not delegate legal responsibility for complying with the terms, conditions, and obligations of this contract without the prior written consent of the Director of the Department. Notwithstanding any other provision of this paragraph, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the project or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the project, or no longer necessary, material or useful in such operation, without the prior written consent of the Director of the Department.
- B. To enter into such contractual arrangements with third parties as it deems advisable to assist it in meeting its responsibilities under this contract.
- C. To fulfill all declarations, assurances, representations and statements in the application and all other documents, amendments and communications filed with the Department by the Applicant in support of the request for this loan.
- D. To comply with applicable State and Federal employment requirements including, but not limited to, Equal Employment Opportunity and Civil Rights requirements.
- E. To make efforts to award subagreements to Minority and Women—owned businesses (MBE/WBE). The fair share goals, 9% and 3% respectively, will be in bid solicitations and documentation of efforts to obtain MBE/NBE participation will be required of any contractor who fails to attain the goals. Quarterly reports of MBE/WBE utilization will be prepared on forms supplied by the Department.
- F. To take affirmative action to ensure that the project shall be completed and operated in conformance with federal and state laws relating to occupational health and safety.
- G. That if prior to completion of this contract the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.
- H. That in the event there is any default in the payment of either the principal amount or the interest due under this contract, or any breach by the Borrower of any of the terms or conditions of this contract, the entire principal amount and whatever interest is due to the date of payment may be declared due and immediately payable. The amount of such default shall bear the same interest rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.
- I. That any waiver by the Department at any time of the rights or duties under this contract shall not be deemed a waiver of any subsequent or additional rights or duties under this contract.
- J. That the use by the Department of any remedy specified in this contract for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.
- K. That this agreement is binding upon the Borrower and the Department, and any person, office or entity succeeding the Borrower or the Department.
- L. To comply with all applicable federal, state and local laws.

SECTION IV. PROJECT MANAGEMENT

The Borrower agrees to:

- A. Require the prime engineering firm(s) and their principals retained for engineering services to carry professional liability indemnification to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability indemnification shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability indemnification must cover all services rendered for all phases of the project, whether or not those services are state funded, until the certification of project performance is accepted by the Department.
- B. Comply with the Public Contracts Bond Act, Title 54, chapter 19, Idaho code, including requiring the prime construction contractor retained for construction to carry performance and payment bonds equal to one hundred percent (100%) of the contract price. The bond will be released when the constructed facility is accepted by the Borrower.
- C. Assure that contracts related to the project which provide for arbitration allow appeal of any resulting arbitration decision to a district court or allow the arbitration to be non-binding on both parties if either party desires not to use arbitration as a method of dispute settlement.
- D. Jointly with an engineering consultant provide assurances that the physical and operational integrity of the works, when constructed, will achieve the level of treatment provided for in the design specifications.
- E. Provide for the accumulation of funds through charges made for services, through revenue bonds, or otherwise, for the purposes of (1) establishing a fund dedicated solely to the repayment of principal and interest on this loan, (2) capital replacement and (3) future improvement, betterment, and extension of such works occasioned by increased wastewater loadings on the works.
- F. Provide a plan and program for an equitable user charge system for payment of operation and maintenance of constructed facilities. Make available on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final payment.
- G. Develop and adopt a sewer use ordinance approved by the Department prior to receiving final payment of State loan funds.
- H. Provide an operation and maintenance manual for the project approved by the Department prior to receiving final payment of State loan funds.
- I. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.
- J. Assure that the operator in charge of the treatment facility has a level of competency commensurate with the nature of the collection and treatment facility. He(She) must be a graduate of an approved wastewater operators training program or be certified as a Wastewater Treatment Works Operator in a class equal to or greater than that of the facility.
- K. Assure that treatment facility personnel shall participate in operator training programs approved by the Department and designed to assure competence in the operation and maintenance of the facility.
- L. Commence satisfactory operation and maintenance of the sewage treatment facility on completion of the project in accordance with applicable provisions, rules and regulations of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the treatment facility without the written approval of the Department.
- M. Provide for continuing acceptance and treatment of local septage waste, if such facilities were constructed under this loan contract.
- N. Review and update the user charge system at least biennially during the life of this agreement to assure that all costs including debt retirement, operation and maintenance are offset by sufficient revenues.
- O. Maintain project accounts in accordance with "generally accepted government accounting standards." These standards are usually defined, but not limited to, those contained in the U.S. General Accounting Office (GAO) publication "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" (2/27/81)
- P. Certify whether or not the project is performing in accordance with the design performance standards after the project has been in operation for one year. If the project cannot meet these standards, the Borrower must submit a corrective action report and a schedule for bringing the project into compliance.

SECTION V. SPECIAL CONDITIONS

A. The Borrower shall complete the project in accordance with the following schedule:

Number of months from Loan Acceptance	Task
Done	10% Design Review
Done	50% Design Review
Done	90% Design Review
1	Final Plans, Specifications and Bidding Documents
Done	Bid Summary
1	Award Construction Contract
2	Project Management Conference
6	Plan of Operation Amendment
9	Draft Operation & Maintenance Manual
9	Staffing Plan
18	Construction Completion
Done	User Charge System Enacted
Done	Sewer Use Ordinance Enacted
18	Final O&M Manual
18	Final Inspection
18	Initiate Operation
19	Final Payment
30	Certify Performance

B. The above schedule may be changed by amending the plan of operation; all amendments to the plan of operation must be approved by the state project engineer, prior to becoming effective.

SECTION VI. SECURITY REQUIREMENTS

The Borrower agrees:

A. This loan will be evidenced and secured by revenue bond(s) in the amount of \$5,000,000 (five million dollars). A copy of the revenue bond ordinance will be attached to this contract and incorporated by reference.

SECTION VII. LOAN DISBURSEMENTS

The Borrower agrees:

- A. This loan shall be used solely to aid in the financing of the Borrower’s project.
- B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department, loans funds shall be released to the Borrower. Interest will begin accruing with the first disbursement of funds.
- C. A project review by the Department will determine final eligible costs for the project.
- D. If the actual eligible cost of the project is determined by the Department to be lower than the estimated eligible cost, the loan amount will be reduced accordingly.
- E. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:
 - 1. The Borrower’s engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department and (b) that the project is fully operational; and
 - 2. The Department has inspected the project and verifies the engineer’s certification; and
 - 3. The Department has determined that all terms and conditions of this agreement have been met; and

4. A final loan repayment schedule has been completed;
 5. The revenue bond referred to in Section VI has been issued.
- F. This offer is subject to the existence of the offered sum of money in the Account at the time of payment. Should the offered sum of money not be available in the Account at the time of payment, the Department hereby agrees to pay the Applicant the offered sum of money on the basis of the Applicant's priority position immediately upon the accrual of said sum in the Account.

SECTION VIII. REPAYMENT TERMS AND SCHEDULE

The Borrower agrees:

- A. This loan shall be repaid in the manner set forth in the revenue bond(s) attached to this contract and incorporated by reference.
- B. To pay biannual payments of principal and interest and to fully amortize this loan not later than fifteen (15) years from project completion. Interest will begin accruing with the first disbursement of funds.
- C. This loan contract shall remain in full force and effect for the actual service life of the project. At a minimum, this loan contract shall remain in full force and effect until all loan proceeds, including principal and interest, have been paid in full or the contract is otherwise suspended or terminated by the Department.

SECTION IX. PROHIBITIONS

The Borrower agrees:

Expansion of collection systems in excess of reserve capacity of the treatment works will be prohibited unless concurrent designated construction provisions for adequate treatment are provided by the Borrower.

SECTION X. SUSPENSION OR TERMINATION OF LOAN CONTRACT

- A. The Director may suspend or terminate this loan contract prior to final disbursement for failure by the Borrower or its agents, including architectural/engineering firm(s), contractor(s) or subcontractor(s), to perform. This loan contract may be suspended or terminated for good cause including, but not limited to, the following:
 1. Commission by an employee or agent of the Borrower, of any of the following acts in a manner which materially affects the Borrower's obligations under this contract: fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, receipt of stolen property or any crime for which the maximum sentence includes the possibility of one (1) or more years' imprisonment.
 2. Violation(s) of any term of this loan contract; or
 3. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction; or
 4. Utilizing a contractor or subcontractor who has been debarred for good cause by any federal or state agency from working on public work projects funded by that agency.
- B. The Director will notify the Borrower in writing and by certified mail of the intent to suspend or terminate this loan contract. The notice of intent shall state:

1. Specific acts or omissions which form the basis for suspension or termination; and
 2. Availability of a hearing, conducted by the Director, or his designee as hearing officer, said hearing being conducted in an informal manner at a time and in a place specified by the Director.
- C. Upon the proof of the existence of cause(s) for suspension or termination by substantial evidence or by proof of judgment or conviction of offense(s), the Director shall make a written determination, sending the determination to the Borrower by certified mail within seven (7) days of the hearing.
- D. Upon written request by the Borrower with evidence that the cause(s) for suspension no longer exists, the Director may, if funds are available, reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with the provisions of this loan contract.
- E. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with the provisions of this loan contract.

SECTION XI. ACCESS AND INDEMNIFICATION

The Borrower agrees to:

- A. Provide the Department, or its authorized agents, access to all files, records, accountings and books relating to the management and accountability of this loan.
- B. Indemnify and save harmless the State of Idaho, its agents, and its employees regardless of fault or negligence, from any and all claims, actions, damages, liabilities and expenses directly or indirectly connected to the location, design, construction, operation, maintenance, repair, failure or deactivation of the project or any part of the project.

SECTION XII. OFFER

The offer set forth herein must be accepted, if at all, on or before June 19, 1993. An acceptance must be accompanied by a resolution of the Applicant's governing body authorizing the signator to sign on the Applicant's behalf for the purpose of this agreement.

Dated this 19th day of April, 1993.

Joe, Nagel, Administrator
Division of Environmental Quality
Idaho Department of Health and Welfare

SECTION XIII. ACCEPTANCE

The CITY OF REXBURG, by and through its undersigned representative(s), accepts the foregoing offer and agrees to discharge all obligations and to comply with all terms and conditions contained herein.

Signature of Representative

NILE L. BOYLE, MAYOR
Name and Title of Representative — type or print

APRIL 22, 1993
Date

04/16/93

DRAFTIDAHO DEPARTMENT OF HEALTH AND WELFARE
REPAYMENT SCHEDULE

CITY OF REXBURG LOAN #1892-05

Loan Amt.: 5,000,000.00 Term: 15 years
Int. Rate: 4.00%Repayment Frequency: Semi-annual
Repayments to begin: 06/01/1995

DATE	AMOUNT	INTEREST	PRINCIPAL	BALANCE
06/01/1995	223,249.61	100,000.00	123,249.61	4,876,750.39
12/01/1995	223,249.61	97,535.01	125,714.60	4,751,035.79
06/01/1996	223,249.61	95,020.72	128,228.89	4,622,806.90
12/01/1996	223,249.61	92,456.14	130,793.47	4,492,013.42
06/01/1997	223,249.61	89,840.27	133,409.34	4,358,604.08
12/01/1997	223,249.61	87,172.08	136,077.53	4,222,526.55
06/01/1998	223,249.61	84,450.53	138,799.08	4,083,727.47
12/01/1998	223,249.61	81,674.55	141,575.06	3,942,152.41
06/01/1999	223,249.61	78,843.05	144,406.56	3,797,745.85
12/01/1999	223,249.61	75,954.92	147,294.69	3,650,451.16
06/01/2000	223,249.61	73,009.02	150,240.59	3,500,210.56
12/01/2000	223,249.61	70,004.21	153,245.40	3,346,965.16
06/01/2001	223,249.61	66,939.30	156,310.31	3,190,654.85
12/01/2001	223,249.61	63,813.10	159,436.51	3,031,218.34
06/01/2002	223,249.61	60,624.37	162,625.24	2,868,593.10
12/01/2002	223,249.61	57,371.86	165,877.75	2,702,715.35
06/01/2003	223,249.61	54,054.31	169,195.30	2,533,520.05
12/01/2003	223,249.61	50,670.40	172,579.21	2,360,940.83
06/01/2004	223,249.61	47,218.82	176,030.79	2,184,910.04
12/01/2004	223,249.61	43,698.20	179,551.41	2,005,358.63
06/01/2005	223,249.61	40,107.17	183,142.44	1,822,216.19
12/01/2005	223,249.61	36,444.32	186,805.29	1,635,410.90
06/01/2006	223,249.61	32,708.22	190,541.39	1,444,869.51
12/01/2006	223,249.61	28,897.39	194,352.22	1,250,517.28
06/01/2007	223,249.61	25,010.35	198,239.26	1,052,278.02
12/01/2007	223,249.61	21,045.56	202,204.05	850,073.97
06/01/2008	223,249.61	17,001.48	206,248.13	643,825.84
12/01/2008	223,249.61	12,876.52	210,373.09	433,452.75
06/01/2009	223,249.61	8,669.05	214,580.56	218,872.19
12/01/2009	223,249.61	4,377.43	218,872.19	0.00

SUMMARY OF
ORDINANCE NO. 766

AN ORDINANCE OF THE CITY OF REXBURG, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A SEWER REVENUE BOND IN THE PRINCIPAL AMOUNT OF \$5,000,000; DESCRIBING THE BOND; SPECIFYING THE DATE, FORM, MATURITY, REGISTRATION, AND AUTHENTICATION OF THE BOND; CONFIRMING THE SALE OF THE BOND; PROVIDING FOR THE COLLECTION AND DISPOSITION OF REVENUE; ESTABLISHING CERTAIN FUNDS AND ACCOUNTS; PROVIDING COVENANTS; AND PROVIDING FOR OTHER MATTERS RELATING THERETO

A summary of the principal provisions of Ordinance No. 766 of the City of Rexburg, Madison, County, Idaho, adopted on December 7, 1994, is as follows:

SECTION I: Defines the terms and phrases used in said Ordinance.

SECTION II: Describes the sewer system improvement project to be constructed with the proceeds of the Bond authorized by said Ordinance, and states that \$5,000,000 of the Cost of the Project is to be paid from the sale of a sewer revenue bond of the City authorized at a special election held on November 3, 1992, and the balance of which is to be paid from other legally available funds.

SECTION III: Describes the City of Rexburg Sewer Revenue Bond, Series 1994 (the "Bond"), and provides for the terms of payment and the maturity of the Bond.

SECTION IV: Provides for the manner and method of execution of the Bond.

SECTION V: Sets forth the place and manner of payment of the Bond.

SECTION VI: Provides for the prepayment of the Bond at the option of the City, and the method for effecting the same.

SECTION VII: Provides for defeasance of the Bond.

SECTION VIII: Provides for sewer rates and charges.

SECTION IX: Pledges the Net Revenues of the sewer system for the payment of the Bond.

SECTION X: Establishes the "City of Rexburg Sewer Project Construction Fund."

SECTION XI: Establishes the "City of Rexburg Sewer Revenue Fund" and establishes the priority of the use of sewer revenues.

SECTION XII: Establishes the "City of Rexburg Sewer Revenue Bond Fund" and provides for the payment of the principal of and interest on the Bond.

SECTION XIII: Establishes the "City of Rexburg Sewer Revenue Bond Reserve Fund," provides for the accumulation of funds therein, and provides for the use of reserve funds.

SECTION XIV: Provides for the designation and disposition of surplus funds.

SECTION XV: Establishes the conditions of and limitations on the issuance of additional bonds or parity obligations.

SECTION XVI: Provides for the investment of surplus funds.

SECTION XVII: Provides certain general covenants of the City with the registered owner of the Bond.

SECTION XVIII: Provides certain special covenants of the City with respect to maintaining the tax-exempt status of interest on the Bond.

SECTION XIX: Provides that the City may adopt supplemental ordinances.

SECTION XX: Recites that the Bond is issued pursuant to the Idaho Revenue Bond Act.

SECTION XXI: Provides for remedies in case of default.

SECTION XXII: Incorporates the Loan Agreement by reference between the City, as borrower, and the State of Idaho, Department of Health and Welfare, as lender.

SECTION XXIII: States that the Ordinance constitutes a contract with the Registered Owner of the Bond.

SECTION XXIV: Declares that the project is essential to the public interest, welfare, and convenience.

SECTION XXV: Provides for severability.

SECTION XXVI: Repeals prior inconsistent ordinances, to the extent of any inconsistency.

SECTION XXVII: Provides for the publication of the Ordinance or a summary thereof and the effective date of the Ordinance.

The full text of Ordinance No. 766 is available at City Hall and will be provided to any citizen upon personal request during normal office hours.

DATED this 7th day of December, 1994

Nile L. Boyle, Mayor

(SEAL)

ATTEST:

Rose Bagley

CERTIFICATION OF CITY ATTORNEY

I, the undersigned City Attorney for and legal advisor to the City of Rexburg, Madison County, Idaho, hereby certify that I have read the attached summary of Ordinance No. 766 of the City of Rexburg and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

DATED this 7th day of December, 1994.

City Attorney