



**ORDINANCE NO. 432**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE JOINT WATER AND SEWER REVENUE BONDS OF THE CITY OF REXBURG, DATED JANUARY 1, 1963, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$330, 000.00, PAYABLE SOLELY FROM THE RATES AND CHARGES FOR THE USE OF, AND THE SERVICE RENDERED BY, HT MUNICIPAL JOINT WATER AND SEWER SYSTEM, FOR THE PURPOSE OF PROVIDING FUNDS TO DEFRAY THE COST OF IMPROVING, BETTERING AND EXTENDING THE MUNICIPAL SEWER COLLECTION SYSTEM; PROVIDING THE FORM, TERMS AND CONDITIONS**

**WHEREAS**, the City of Rexburg (herein sometimes designated as the "City"), in the County of Madison and State of Idaho, is a municipal corporation duly organized and existing as a City of the second class under the laws of the State of Idaho; and

**WHEREAS**, the City presently owns a sewer system, and a water system, and

**WHEREAS**, the interest of the City and of the inhabitants thereof, and the public interest and necessity, demand the construction of a sewage stabilization pond and interceptor lines, and improvement, betterment and extension of the municipal sewer collection system; and

**WHEREAS**, the City has never pledged the revenues derived from the operation of said water system nor from said sewer system for the redemption of revenue bonds payable from such revenues, or otherwise with result that the net revenues to be derived from the operation thereof may be pledged lawfully and irrevocably to secure the repayment of the City's joint water and sewer revenue bonds issued for improving, bettering and extending the municipal sewer collection system, pursuant to the Idaho Revenue Bond Act, cited as Chapter 47, Session Laws of Idaho, 1951 and all laws thereunto enabling; and

**WHEREAS**, the City had determined, and does hereby determine, to issue such joint water and sewer revenue bonds payable from such revenues for the purpose of improving, bettering and extending the City's joint water and sewer system by construction of a sewage stabilization pond and interceptor lines, and improving, bettering and extending the municipal sewer collection system; and

**WHEREAS**, the City has further determined, and does hereby determine, that said water system or facilities and said sewer system or facilities shall constitute and be operated as a single public utility designated as the City's joint water and sewer system (herein sometimes designated as the "joint system" or as the "system"); and

**WHEREAS**, said revenue bonds shall not be a debt of the City and it shall not be liable thereon, nor shall said bonds be payable out of any funds other than the revenue from said system pledged to the payment thereof: and

**WHEREAS**, in the judgment of said City Council, the danger to the public health arising from the lack of proper sanitary facilities will be abated by such extension of said system; and

**WHEREAS**, at a special, municipal bond election duly held in the City on Tuesday, the 31st day of July, 1962, there was submitted to the qualified electors of the City the following question:

"Shall the City of Rexburg, Idaho, be authorized to issue and sell its negotiable, coupon; water and sewer revenue bonds, in the aggregate principal amount of \$330,000.00, or so much thereof as may be necessary, in one or more series, bearing interest at a rate not to exceed six per cent (6 %) per annum, maturing serially commencing not later than two and ending not later than twenty-one years from the date of said bonds, being subject to prior redemption ten years from date or on any interest payment date thereafter, upon such terms and conditions as the City Council may determine, and payable solely from the revenues of the water and sewage works in accordance with the Revenue Bond Act of Idaho, for the purpose of constructing a sewage stabilization pond and interceptor lines, and improving, bettering and extending the municipal sewer collection system in accordance with the provisions of Ordinance No. 430, signed and approved the 6th day of June, 1962?" and

**WHEREAS**, said question for the issuance of said revenue bonds was approved by the affirmative vote of two-thirds of the qualified electors of the City of Rexburg voting at said election; and

**WHEREAS**, the Council has determined, and does hereby determine, that it is necessary and for the best interests of the City and the inhabitants thereof that said bonds be so issued.

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

**SECTION I: RATIFICATION.** That all action heretofore taken (not inconsistent with the provisions of this ordinance) by the City Council and the officers of the City of Rexburg, directed toward improving, bettering and extending the City's joint water and sewer system by the construction of a sewage stabilization pond and interceptor lines, and improving bettering and extending the municipal sewer collection system, toward issuing the City's joint water and sewer revenue bonds therefor, and toward holding the special, municipal, bond election for that purpose on Tuesday the 31<sup>st</sup> day of July, 1962, be, and the same hereby is ratified, approved and confirmed.

**SECTION II: BOND ELECTION.** That the City submitted said water and sewer revenue bond question at said special municipal bond election held in the City on Tuesday, the 31st day of July, 1962, to the qualified electors of the City; that more than two-thirds (2/3) of the qualified electors voting on said question cast ballots for the issuance of said revenue bonds; that the result of said election is hereby so declared; and that said election was held and conducted in due compliance with law.

**SECTION III: IMPROVEMENTS AUTHORIZED.** That the City's joint water and sewer system shall be, and the same is hereby ordered to be, improved, bettered and extended by the construction of a sewage stabilization pond and interceptor lines, and improvement, betterment and

extension of the municipal sewer collection system; the same is hereby authorized, at a total cost of not exceeding \$411,000.00; and the necessity thereof is hereby so declared.

**SECTION IV: DESCRIPTION OF IMPROVEMENTS.** That such improvements, betterments and extensions, briefly and generally described, shall consist of the construction of a sewage stabilization pond and interceptor lines, and improvements, betterments and extensions to the municipal sewer collection system, including without limiting the generality of the foregoing, appurtenances necessary, useful or convenient for the collection of sewage of the City.

**SECTION V: REFERENCES TO FURTHER MATERIAL.** That such improvements are more specifically shown and described in the report, maps, plans and specifications prepared therefor by the Consulting Engineer of the City, Cornell, Howland, Hayes & Merryfield, of Boise, Idaho; and reference for further details is hereby made to said preliminary report, maps, plans and specifications now on file and available for inspection in the office of the City Clerk.

**SECTION VI: NECESSITY OF BONDS AND WAY OF PAYMENT.** That for the purpose of providing funds to defray in part the cost of so improving, bettering and extending the City's joint water and sewer system, it is hereby declared necessary that the City issue its "City of Rexburg Joint Water and Sewer Revenue Bonds, Series January 1, 1963." in the aggregate principal amount of \$330,000.00, said bonds to be payable, both as to principal and interest, solely from the net revenues derived from rates and charges for the use of, and the service rendered by, such joint water and sewer system, being the gross revenues after deduction only for all expenses of operation and maintenance, and that the City pledge irrevocably and exclusively (except as hereinafter otherwise provided) such net revenues to the payment of said bonds and the interest thereon, the proceeds thereof to be used solely for the purpose of so improving, bettering and extending the municipal, joint water and sewer system, pursuant to Chapter 47, Session Laws of Idaho, 1951, cited as the Revenue Bond Act of the State of Idaho, and as sections 50-2812 to 50-2827, both inclusive, Idaho Code, 1957 Republication of Volume 9, and all laws thereunto enabling.

**SECTION VII: AUTHORIZATION OF BONDS.** That in order to provide funds to defray in part the cost of so improving, bettering and extending the City's joint water and sewer system by construction of a sewage stabilization pond and interceptor lines, and improving, bettering and extending the municipal sewer collection system, the revenue bonds of the City designated "City of Rexburg Joint Water and Sewer Revenue Bonds, Series January 1, 1963," are hereby authorized to be issued in the aggregate principal amount of \$330,000.00.

**SECTION VIII: BOND DETAILS.** That said bonds shall bear date as of January 1, 1963, consisting of 330 bonds in the denomination of \$1,000.00 each, numbered consecutively from 1 to 330, both inclusive, bearing interest until maturity at a rate or rates not exceeding six per centum (6%) per annum, evidenced until their respective maturities by interest coupons attached to said bonds, payable semi-annually, commencing on the first day of July, 1963, and thereafter on the first days of January and July in each year and being numbered and maturing serially in regular numerical order and being payable on the first day of January in each of the designated years and amounts, as follows:

<b>Bond Numbers (All Inclusive)</b>	<b>Years Maturing Maturing</b>	<b>Amounts Maturing</b>
1-5	1964	\$5,000.00
6-12	1965	7,000.00

13-20	1966	5,000.00
21-29	1967	9,000.00
30-39	1968	10,000.00
40-50	1969	11,000.00
51-62	1970	12,000.00
63-76	1971	14,000.00
77-91	1972	15,000.00
92-107	1973	16,000.00
108-124	1974	17,000.00
125-142	1975	18,000.00
143-161	1976	19,000.00
162-181	1977	20,000.00
182-202	1978	21,000.00
203-225	1979	23,000.00
226-250	1980	25,000.00
251-275	1981	25,000.00
276-302	1982	27,000.00
303-330	1983	28,000.00

The Principal of and the interest accruing on said bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges, at the Rexburg Branch of the First Security Bank of Idaho, in Rexburg, Idaho. In the event any of said bonds shall not be paid upon presentation at maturity, it shall continue to draw interest at the rate of six per centum (6%) per annum until the principal thereof is paid in Full.

**SECTION IX: Prior Redemption.** That bonds numbered 108 to 330, both inclusive, maturing on and after the first day of January, 1974, are subject to prior redemption, in whole or in part, in inverse numerical order, at the option of the City, on the first day of January, 1973, or on any interest payment date thereafter prior to maturity, at a price equal to the principal amount thereof, accrued interest to the redemption date, and a premium of \$25.00 per bond so redeemed. Notice of redemption shall be given by the City Treasurer, in its name, by publication of such notice at least once, not less than thirty days nor more than sixty days prior to the redemption date, in a newspaper of general circulation in said City, and a copy of such notice shall be sent by registered, first class, postage prepaid, mail at least thirty days prior to the redemption date:

- A. To the original purchaser of the bonds (or to the managing partner of any purchasing syndicate,
- B. To Edward L. Burton & Company, & Company, Salt Lake City 1, Utah, i.e., the City's fiscal agent, and
- C. To the Rexburg Branch of the First Security Bank of Idaho, in Rexburg, Idaho, i.e., the above named paying agent bank.

Such notice shall specify the number or numbers of the bonds to be so redeemed (if less than all are to be redeemed) and the date fixed for redemption, and shall further state that on such redemption date there will become and be due and payable upon each bond so to be redeemed, at the Rexburg Branch of the First Security Bank of Idaho, the principal amount, thereof with accrued interest to the redemption date, and the stipulated premium, and that from and after such date interest will cease to accrue. Notice having been given in the manner herein above provided, the bond or bonds so called for redemption shall become due and payable on the redemption date so designated, and

upon presentation thereof at said bank, together with the appurtenant coupons maturing subsequent to the redemption date, the City will pay the bond or bonds so called for redemption.

**SECTION X: NEGOTIABILITY.** That, subject to the provisions specifically made or necessarily implied herein, the revenue bonds hereby authorized shall be fully negotiable acid shall have all the qualities of negotiable coupon paper, and the holder or holders thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Negotiable Instruments Law.

**SECTION XI: FORM AND EXECUTION OF BONDS AND COUPONS.** That said bonds shall be payable to bearer and executed and signed in the corporate name of the City by its Mayor and each bond shall be counter-signed by the Treasurer thereof, and shall be attested by the signature of the Clerk under the official seal of the City. The interest coupons shall be also payable to bearer, shall be attached to each of such bonds, and shall be numbered from one upwards, consecutively, commencing with that coupon first maturing, and all such interest coupons shall state on the face thereof the amount thereof, the name of the City the identifying series issue and number of the bond to which is attached, and each such or all of the persons who signatures appear thereon shall have ceased to fill their respective offices.

**SECTION XII: INCONTESTABLE RECITAL.** That pursuant to Section 12 of the Revenue Bond Act the bonds herein authorized shall recite that they are issued pursuant to said act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

**SECTION XIII: SPECIAL OBLIGATIONS.** That all of said bonds, together with the interest accruing thereon, shall be payable and collectible solely out of the net income to be derived from the operation of the system, the income of which is so pledged; the holder or holders thereof may not look to any general or other fund for the payment of principal and interest on such obligations, except the designated special funds pledged therefor; and such bonds shall not constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

**SECTION XIV: FORMS OF BONDS AND COUPONS.** That said bonds, the coupons thereto attached, and the certificate to be endorsed thereon shall be in substantially the following form.

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF IDAHO

COUNTY OF MADISON

CITY OF REXBURG

JOINT WATER AND SEVER REVLNUE BOND

SERIES JANUARY 1, 1963

NO. \_\_\_\_\_

\$1,000.00

The City of Rexburg, in the County of Madison and State of Idaho, for value received, hereby promises to pay to the bearer hereof, solely from the special funds provided therefor, as hereinafter set forth, on the first day of January, 19\_\_, the principal sum of

ONE THOUSAND DOLLARS

and to pay from said special funds interest hereon from date until maturity at the rate of \_\_\_\_\_ per centum (\_\_\_\_ %)

per annum,\* (evidenced until maturity by one set of coupons designated "A", plus additional interest at the rate of \_\_\_\_\_ per centum (\_\_\_\_ %) per annum from the first day of \_\_\_\_\_, 1963, to the first day of \_\_\_\_\_, 19\_\_, evidenced by a second set of coupons designated VB which are presentable for payment separately and apart from other coupons, all inters being)\* payable semiannually, commencing on the first day of July, 1963, and thereafter on the first days of January and July, in each year, upon presentation and, surrender of this bond and the annexed interest coupons as they severally become due. If upon presentation at maturity, payment of this bond is not made as here-in provided, interest shall continue at the rate of six per centum (6%) per annum until the principal hereof is paid in full. Both principal and interest are payable in lawful money of the United States of America, without deduction for exchange or collection charges, at the Rexburg Branch of the First Security Bank of Idaho, in Rexburg, Idaho.

\*\* (This bond is one of a series subject to prior redemption in inverse numerical order at the option of the City on January, 1973, or on any interest payment date thereafter, at a price equal to the principal amount thereof, accrued interest to the redemption date, and a premium of \$25.00 per bond so redeemed. Redemption shall be made upon not less than thirty days prior notice by publication in a newspaper of general circulation in the City, in the manner and upon the conditions provided in the ordinance authorizing the issuance of this bond.)

Payment of this bond and the interest thereon shall be made solely from, and as security for such payment there are pledged, pursuant to Ordinance No. 432, duly passed and approved the 2nd day of January 1963, two special funds identified as the "City of Rexburg Joint Water and Sewer Revenue Bonds, Series January, 1963 Interest and Bond Retirement Fund," into which the City covenants to pay from the revenues derived from the operation of its municipal joint water and sewer system, after provision only for all necessary and reasonable expenses of the operation and maintenance of said system, sums sufficient to pay when due the principal of and the interest on the bonds of the series of which this is one, and to create and maintain a reasonable and specified reserve for such purpose. For a description of said funds and the nature and extent of the security afforded thereby for the payment of the principal of and interest on said bonds, reference is made to said ordinance.

The City covenants and agrees with the holder of this bond and with each and every person who may become the holder hereof that it will keep and perform all the covenants of said ordinance, including but not limited to its covenant against the sale or mortgage of said system or any part

thereof unless provision shall have been made for the payment of the principal of and the interest on the bonds of the series of which this is one, its covenant that it will prescribe and collect rates, fees and charges, including the levy or assessment of such rates, fees, and charges against governmental units or departments or agencies, including the state of Idaho and its subdivisions, for the services and facilities furnished by the municipal joint water and sewer system, and its covenant that it will provide methods of collections and penalties, to produce revenues or earnings annually to pay operating and maintenance charges, and one hundred forty per centum (11 %) of both the principal of and the interest on bonds and any other obligations payable from the revenues of the system, excluding reserves therefor.

This bond and the series of which it is one constitute an irrevocable first lien (but not necessarily an exclusively first lien) on the net revenues derived from rates and charges for the use of, and the services rendered by, the system. Bonds in addition to the bonds of the series of which this is one may be issued payable from the net revenues of the system and having a lien thereon inferior and junior to the lien, or subject to designated conditions having a lien thereon on a parity with the lien, of the bonds of the series of which this is one, in accordance with the provisions of said ordinance.

This bond is one of a duly authorized issue of three hundred and thirty (330) bonds known as "City of Rexburg Joint Water and Sewer Revenue Bonds, Series January 1, 1963" for the purpose of providing funds to defray in part the cost of improving, bettering and extending the City's Joint Water and Sewer System by construction of a sewage stabilization pond and interceptor lines, and improving, bettering and extending, the municipal sewer collection system, under the authority of and in full conformity with the Constitution and laws of the State of Idaho, and pursuant to an ordinance of the City adopted, published and made law of the City prior to the issuance of this bond. The issuance of this bond was authorized by the affirmative vote of more than two-thirds of the qualified electors of the City of Rexburg voting at an election in the City on the 31st day of July, 1962.

This bond is subject to the conditions, and every holder hereof by accepting the same agrees with the obligor and every subsequent holder hereof, that (a) the delivery of this bond to any transferee shall vest title in this bond and in the interest coupons attached hereto in such transferee to the same extent for all purposes as would the delivery under like circumstances of any negotiable instrument payable to bearer; (b) the obligor and any agent of the obligor may treat the bearer of this bond as the absolute owner hereof for all purposes, and shall not be affected by any notice to the contrary; (c) the principal of and the interest on this bond shall be paid, and this bond and each of the coupons appertaining thereto are transferable, free from and without regard to any equities between the obligor and the original or any intermediate holder hereof or any set-offs or cross-claims; and (d) the surrender to the obligor of any agent of the obligor of this bond and of each of the coupons shall be a good discharge to the obligor for the same.

It is hereby recited that this bond and the series of which it is one are issued pursuant to the Revenue Bond Act, being Chapter 47, Session Laws of Idaho, 1951, and all other laws thereunto enabling, and this recital shall be conclusive evidence of the validity of said bonds and the regularity of their issuance. This bond and the series of which it is one do not constitute a debt of the City of Rexburg within the meaning of any constitutional or statutory limitations or restrictions, and the City shall not be liable thereon, nor is this bond payable out of any funds other than the revenue pledged for the payment thereof, but is payable solely from the revenue so pledged. This bond and the issue of which it is one, together with the interest thereon, are exempt from taxation under the laws of the State of Idaho, except transfer and estate taxes.

It is further certified, recited and warranted that all requirements of law have been fully complied with by the proper officers of the City of Rexburg in the issue of this bond.

Its TESTIMONY WHEREOF, the City of Rexburg has caused this bond to be executed and signed in the corporate name of the City of Rexburg by its Mayor, countersigned by the City Treasurer, and attested by the City Clerk under the official seal of the City of Rexburg, and has caused the attached coupons to be signed with the facsimile signature of the City Treasurer, which official by the execution of this bond does adopt as and for his own proper signature his facsimile signature appearing on said coupons, all as of the first day of January 1963.

CITY OF REXBURG

By \_\_\_\_\_  
Mayor

Countersigned:  
\_\_\_\_\_  
City Treasurer

(SEAL)

Attest

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

\*(To be inserted in each bond, if any, bearing interest payable by two sets, i.e., "A" and "B", coupons.)

\*\*\*(To be inserted in bonds numbered 108 to 330, both inclusive, maturing on and after the first day of January, 1974.)

(End of Form)

(Form of Coupon)

Coupon  
No. \_\_\_\_\_

\$ \_\_\_\_\_

On the first day of January, 19\_\_ \*\* (unless the bond to which this coupon is attached has been called for prior redemption), the City of Rexburg, in the County of Madison and the State of Idaho, will pay to bearer in lawful money of the United States of America, without deduction for exchange or collection charges, at the Rexburg Branch of the First Security Bank of Idaho, in Rexburg, Idaho, the above designated amount solely from and secured by a pledge of two special funds created from the net revenues derived from the operation of the municipal joint water and sewer system of the City, and providing for the payment of the semiannual interest on its City of Rexburg Joint Water and Sewer Revenue Bond, Series January 1, 1963, and bearing

Bond  
No. \_\_\_\_\_

(Facsimile Signature) \_\_\_\_\_  
City Treasurer

\*(Insert "A" or "B" as well as the coupon number in each coupon, if the interest designated by the purchaser is payable by two, rather than one, sets of coupons.)

\*\* (Insert in coupons maturing on and after July 1, 1973, attached to bonds numbered 108 to 330, both inclusive, maturing on and after January 1, 1974.)

(End of Form of Coupon)

(Form of Registration Certificate)

We, the undersigned, the duly appointed, qualified respectively and acting City Clerk and City Treasurer respectively, of the City of Rexburg, Madison County, Idaho, do hereby certify that the within bond has been duly registered in permanent public record books kept in our office for said purpose in full compliance with law, showing the number, rate of interest, date and amount of sale, when and where payable, and the names and addresses of the purchasers.

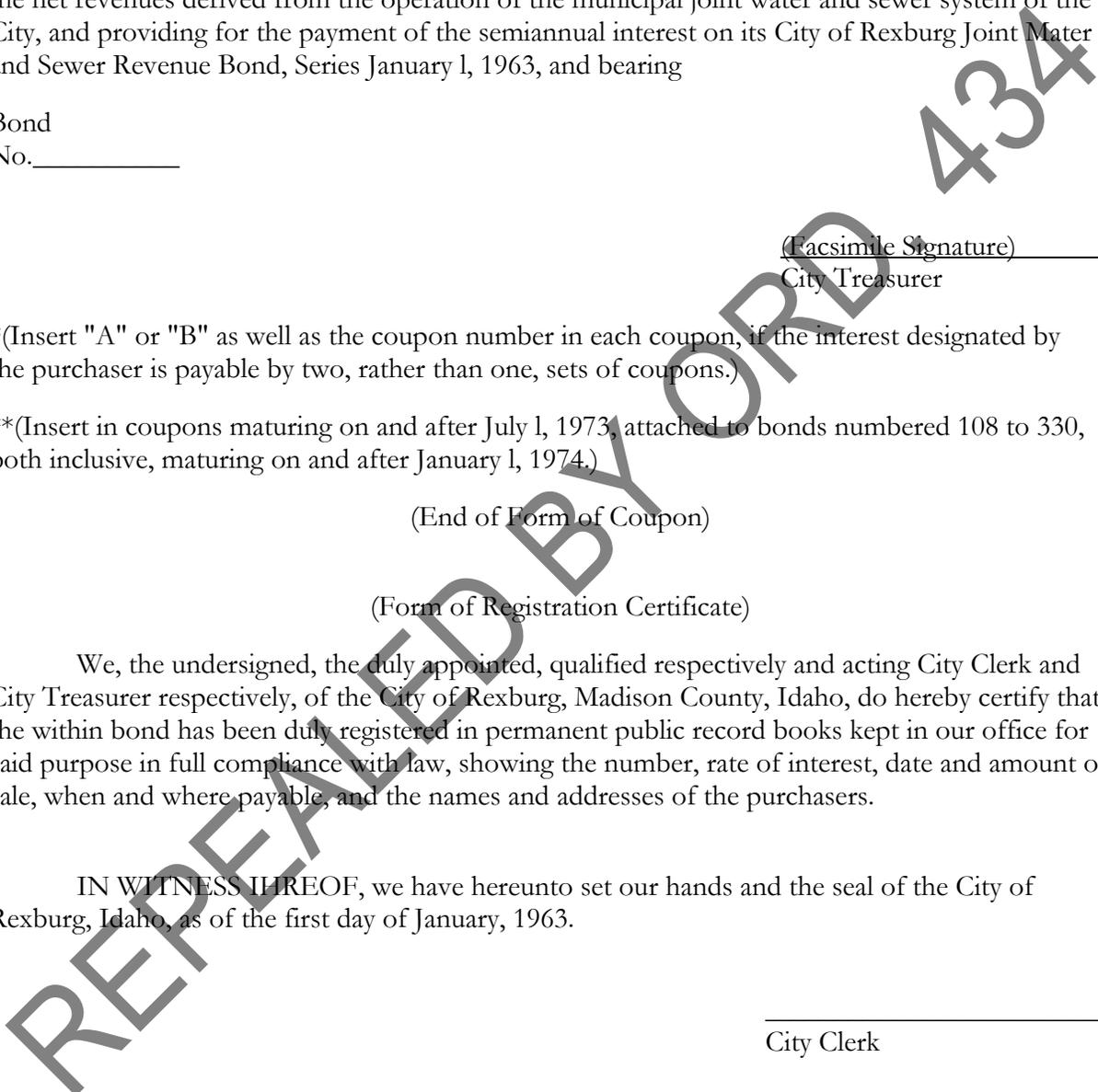
IN WITNESS WHEREOF, we have hereunto set our hands and the seal of the City of Rexburg, Idaho, as of the first day of January, 1963.

(SEAL)

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

\_\_\_\_\_  
City Treasurer

(End of Form of Registration Certificate)



**SECTION XV. PERIOD OF FACILITIES' USEFULNESS.** That it is hereby determined and recited that the period of usefulness of the facilities to be constructed or acquired with the proceeds of the bonds herein authorized is not less than twenty years from the date of said bonds, i.e., from the first day of January, 1963.

**SECTION XVI. DISPOSITION OF BONDS AND BOND PROCEEDS.** A. Execution and Delivery. That the Mayor and the City Clerk are hereby authorized and directed to prepare and execute said bonds as herein provided. When said bonds have been duly executed and sold, the City Treasurer shall deliver them to the lawful purchaser thereof on receipt of the agreed purchase price.

**B. ACQUISITION ACCOUNT.** That except as herein otherwise specifically provided, the proceeds derived from the sale of the bonds herein authorized shall be deposited promptly upon the receipt thereof in a separate account in a bank designated by the Council, which account shall be known as the "City of Rexburg Joint Water and sewer Revenue Bonds, Series January 1, 1963, Construction and Other Acquisition Account herein sometimes designated the "Acquisition Account." The monies in the Acquisition Account, except as herein otherwise specifically provided, shall be used and paid out solely for the purpose of defraying the cost directly or indirectly as permitted by law, of improving, bettering and extending the city's joint water and sewer system by construction of a sewage stabilization pond and interceptor lines, and improving, bettering and extending the municipal sewer collection system, to serve the City, its inhabitants and the territory adjacent thereto. Monies shall be withdrawn from the Acquisition Account for the purpose of defraying such cost only upon warrants or checks drawn and signed by the Mayor of said City and its Clerk. No warrant for any sum for construction work shall be issued until the Council has received engineering approval certifying that such sum is due and owing for work for the system, nor shall such warrant be issued until the Council has adopted a resolution accepting such certificate and directing the drawing of such warrant or check. The designated approval shall be by the Project Engineers who shall be either, Cornell, Howland, Hayes & Merryfield, consulting engineers of Boise, Idaho, heretofore retained by the City for the purpose of supervising the improvement, betterment and extension of the system, or such successor engineers as may be appointed by the Council with the approval of the original purchaser (or managing partner of any purchasing syndicate) of the bonds. The approval of the Project Engineers must be in the form of a written certificate stating that the payment therein approved is being made to pay for materials supplied or work satisfactorily completed in substantial accordance with the plans and specifications for the work involved. Such certificates of approval shall be in appropriate form, shall be signed by the Project Engineers or their duly accredited representative, and shall be filed with the City Clerk prior to the time such payment are authorized by resolution.

**C. COMPLETION OF PROJECT.** That when such work shall have been completed in accordance with such plans and specifications, and when all amounts due therefor, including all proper incidental expenses.

**D. INITIAL RESERVE FUND DEPOSIT.** That \$15,000.00 of the bond proceeds, shall be promptly deposited into the "Reserve Fund", 11 as an initial contribution to said Fund, to be supplemented pursuant to paragraph C of Section 19 of this ordinance.

**E. ACCRUED INTEREST AND PREMIUM.** That all monies received as accrued interest at the time of delivery of said bonds from the sale thereof and any premium therefor shall be deposited into the Bond Fund, to apply on the payment of interest next due on the bonds payable therefrom.

**F. PURCHASER NOT RESPONSIBLE.** That the purchaser of the bonds herein authorized, however, shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

**SECTION XVII: FISCAL YEAR.** That for the purpose of this ordinance the municipal joint water and sewer system shall be operated upon a fiscal year basis commencing on the first day of January in each year and ending on the last day of December of the same year.

**SECTION XVIII: INCOME FUND.** That for the purposes of this ordinance, a special fund and bank account is hereby authorized and shall be maintained and known as the "City of Rexburg Gross Income Joint and Sewer System Fund." (herein sometimes referred to as the "Income Fund.") So long as any of the bonds hereby authorized shall be outstanding, either as to principal or interest, all income and revenues derived from the operation of the system shall be deposited into the Income Fund.

**SECTION XIX: ADMINISTRATION OF INCOME FUND.** That so long as any of the bonds hereby authorized shall be outstanding, whether as to principal or interest, the following payments shall be made from the Income Fund:

**A. O&M EXPENSE.** Firstly, as a first charge thereon, there shall be set aside each month as an operation and maintenance fund, such reasonable percentage of the Income Fund as the Council shall determine to be reasonable and necessary for the proper operation and maintenance of the system, and said monies shall be used solely therefor, including but not limited to the cost of all salaries, necessary repairs, labor, materials, adequate insurance, and bank collection and other proper charges concerning the accounts and revenue bonds, and other obligations in connection with the system. Any surplus remaining at the end of the fiscal year and not needed for operation and maintenance purposes shall be transferred to the Income Fund and be used for the purposes thereof, as herein provided.

**B. PRINCIPAL AND INTEREST PAYMENTS.** Secondly, and subject to the aforesaid provisions, from any monies remaining in the Income Fund, i.e., from the net income and revenues, there shall be deposited and paid into a bank account to be known as the "City of Rexburg Joint Water and Sewer, Revenue Bonds, Series January 1, 1963, Interest and Bond Retirement Fund," herein sometimes referred to as the "Bond Fund," the following:

- (1) Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the bonds herein authorized, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of interest on the outstanding bonds of said series, and monthly thereafter commencing on each interest payment date one-sixth of the amount necessary to pay the next maturing installment of interest on the outstanding bonds authorized hereby.
- (2) Monthly, commencing on the first day of the month immediately succeeding the

delivery of any of the bonds herein authorized, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding bonds, and monthly thereafter commencing on each principal payment date one-twelfth of the amount necessary to pay the next maturing installment of principal on the bonds authorized hereby.

**C. RESERVE FUNDS PAYMENTS.** Thirdly, in addition to the deposit of the initial amount of \$15,000 into the Reserve Fund, pursuant to paragraph D. of Section 16 of this ordinance, and concurrently with the payments required by the next preceding paragraph B, except as provided by paragraphs D and E of this Section 19 of this ordinance, monthly, commencing on the first day of January, 1963, the sum of \$300.00 each month shall be deposited into a bank account to be known as the "City of Rexburg Joint and Sewer Revenue Bonds, Series January 11, 1963, Reserve Fund," herein, herein sometimes referred to as the "Reserve Fund," until a reserve has been accumulated, including said initial deposit, in an amount or amounts, if any shall be deposited monthly from any monies remaining in the Income Fund, into the Reserve Fund necessary to maintain said Reserve Fund as a continuing reserve in an amount not less than \$25,000.00, herein sometimes designated as the "Minimum Reserve," to meet possible deficiencies in deposits in said Bond Fund so long as the monies therein shall equal not less than the Minimum Reserve. The monies in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used except as hereinafter provided in said paragraphs D and E of this Section 19, only to prevent deficiencies in the payment of the principal of and interest on the bonds hereby authorized resulting from the failure to deposit into the Bond Fund sufficient funds to pay said principal and interest as the same accrue.

**D. TERMINATION UPON DEPOSITS TO MATURITY.** No payment need be made into the Bond Fund, the Reserve Fund, or both, if the amount of the Bond Fund and the amount in the Reserve Fund total a sum at least equal to the entire amount of the outstanding bonds herein authorized, both as to principal and interest to their respective maturities, and both accrued and not accrued, in which case monies in said two funds in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same become due, and any monies in excess thereof in said two funds and any other monies derived from the operation of the system may be used in any lawful manner determined by the Council.

**E. MEETING ANY DELINQUENCIES - USE OF BOND AND RESERVE**

**FUNDS.** If, in any month, the City shall for any reason, fail to pay into the Bond Fund the full amount above stipulated from the net income and revenues of the system, then an amount shall be paid into the Bond Fund in such month from said Reserve Fund equal to the difference between that paid from said net income and revenues and the full amount so stipulated. The money so used shall be replaced in the Reserve Fund from the first revenues thereafter received from the operation of the system not required to be otherwise applied. If, in any month the City shall, for any reason, fail to pay into the Reserve Fund the full amount above stipulated from the net income and revenues of the system, the difference between the amount paid and the amount stipulated shall in like manner be paid therein from the first revenues thereafter received from the operation of the system not required to be otherwise applied. The monies in the Bond Fund and The Reserve Fund shall be used solely and only

for the purpose of paying the principal of and the interest on the bonds issued, hereunder; provided, however, that any monies at any time in excess of \$25,000.00 in the Reserve Fund may be withdrawn there from and used as herein provided for net income and revenues derived from the system; and provided that any monies in the Bond Fund and the Reserve Fund in excess of secured and unaccrued principal and interest requirements to the respective maturities of outstanding bonds may be used as here in above provided in paragraph D of this Section 19 of this ordinance,

**F. USE OF REMAINING REVENUES FOR ADDITIONAL BONDS.** Fourthly, any balance remaining in the Income Fund after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of any additional bonds or other obligations hereafter authorized to be issued outstanding and payable from the revenues of the system, including reasonable reserves therefor, as the same accrue; provided that; the lien of such additional bonds or other obligations on the net income and revenues of the system and the pledge for the payment thereof shall be on a parity with, or subordinate to the lien and pledge of the bonds herein authorized, as hereinafter provided.

**G. INVESTMENT OF MONIES.** Any monies in any fund designated in Sections 13 and 19 of this ordinance not needed to defray operation and maintenance expenses for the system for the current fiscal year nor to defray principal and interest requirements for bonds payable from the system's revenues for the current and next succeeding fiscal year, may be invested or reinvested by the City Treasurer in bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are in this ordinance sometimes designated as "Federal Securities," which shall be subject to redemption at face value by the holder thereof at the option of such holder, or which shall mature not later than three years from the date of such investment except that Federal Securities in the Reserve Fund shall so be subject to redemption at face value or shall mature at least fifteen days prior to the last principal payment date of the bonds herein authorized and outstanding at the time of such investment, or not later than ten years from the date of such investment, whichever limitation is shorter at the date of the investment. The Federal Securities so purchased as an investment of monies in said fund shall be deemed at all times to be a part of said fund, and the interest accruing thereon and any profit realized therefrom shall be credited to the fund, and any loss resulting from such investment shall be charged to the fund. The City Treasurer shall, present for redemption or sale on the prevailing market any Federal Securities so purchased as an investment of monies in the fund whenever it shall be necessary to do so in order to provide monies to meet any payment or transfer from such fund.

**H. PLACES AND TIMES OF DEPOSITS.** Each of the funds and accounts herein above designated in Section 10, 18 and 19 of this ordinance shall be maintained and kept separate from all other funds and accounts in a bank or banks, each of which is a member of the Federal Deposit Insurance Corporation. Each monthly payment shall be made into the proper fund and account on the first day of each month shall be a Sunday or legal holiday, then such payment shall be made on the next preceding secular day. Notwithstanding any other provision herein to the contrary monies shall be deposited with the Rexburg Branch of the First Security Bank of Idaho, in Rexburg, Idaho, at least five days prior to each interest payment date herein designated sufficient to pay the interest on and any principal of the bonds herein authorized then becoming due.

**I. USE OF SURPLUS REVENUES.** After making the payments herein above required to be made by paragraphs A to F, both inclusive, of Section 19 of this ordinance, the remaining income and revenues derived from the operation of the system, if any, shall be applied to all of the following purposes, or to any combination thereof, as the Council may determine:

- (1) The improvement, betterment, and extension of the system;
- (2) The prior redemption of the bonds herein authorized, as herein provided; provided, however, that no bond shall be redeemed from surplus revenues of the system prior to its maturity unless all the bonds of said issue which remain outstanding are redeemed, or the amount in the Reserve Fund equals at least \$25,000.00; and
- (3) Any other lawful purpose or purposes authorized by the Constitution and laws of the State of Idaho, as the Council may direct, including but not necessarily limited to the purposes not herein above dated but provided in Section 7 of the Revenue Bonds Act (Section 50 -2818, Idaho Code), as the same may be here after from time to time amended and supplemented.

**SECTION XX: FIRST LIEN BONDS.** That the bonds authorized herein, subject to the payment of all necessary and reasonable expenses of the operation and maintenance of the system constitute an irrevocable and first (but not necessarily an exclusively first) lien upon the revenues derived from the operation of the system.

**SECTION XXI: ADDITIONAL BONDS.**

**A. LIMITATIONS UPON ISSUANCE.** That nothing in this ordinance contained shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the income or any revenues derived from the operation of the system and constituting a lien upon said revenues on parity with, but not prior nor superior to, the lien of the bonds herein authorized, nor to prevent the issuance of bonds or other obligations refunding all or a part of the bonds herein authorized; provided, however, that before any such additional parity bonds or other parity obligations are authorized or actually issued, other than refunding bonds or other refunding obligations (unless any lien on any revenues of the system of the bonds refunded is subordinate to the lien of the bonds herein authorized and the lien on revenues of the system of the refunding bonds is on a parity with the lien thereon of the bonds herein authorized), firstly, the amount in the Reserve Fund must equal at least the Minimum Reserve, and secondly, the revenues derived from the operation of said system for the fiscal year immediately preceding the date of the issuance of such additional parity obligations shall have been sufficient to pay the costs of operation and maintenance for said fiscal year, and, in addition, sufficient to pay an amount representing one hundred forty centum (140 %) of the combined maximum annual principal and interest requirements of the outstanding revenue bonds and other obligations of the City payable from the revenues of the system and the bonds or other obligations proposed to be issued.

**B. CERTIFICATION OF EARNINGS.** A written certified public accountant, to be employed by the City, that said annual earnings, when adjusted as hereinafter provided, are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver said additional bonds or other obligations on a parity with the bonds herein authorized.

**C. CONSIDERATION OF ADDITIONAL EXPENSES.** In determining whether or not additional parity bonds or other parity obligations may be issued as aforesaid, consideration shall be given to any probable increase (but not reduction) in operating and maintenance expenses that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the said bonds or other obligations.

**D. JUNIOR OBLIGATIONS.** Nothing herein contained shall be construed so as to prevent the City from issuing bonds or other obligations payable from the revenues of the system and having a lien thereon inferior and junior to the lien of the bonds authorized to be issued by this ordinance.

**E. SUPERIOR OBLIGATIONS.** Nothing herein contained shall be construed to permit the City to issue bonds or other obligations payable from the revenues of the system and having a lien thereon prior and superior to the bonds herein authorized to be issued.

**F. USE OF PROCEEDS.** The proceeds of any additional bonds or other obligations payable from revenues of the system shall be used only for improving, bettering and extending the system.

**G. PAYMENT DATES FOR ADDITIONAL OBLIGATIONS.** Any additional parity or junior lien bonds or other parity or junior lien obligations issued in compliance with the terms hereof shall bear interest payable semiannually on the first days of January and July in each year, except that the first coupon on any bond may represent interest accruing for any period not in excess of one year, and such obligations shall mature on the first day of January in the years designated by the Council during the term of said bonds or other obligations.

**SECTION XXII: REFUNDING BONDS.** That the provisions of Section 21 hereof are subject to the exception that if at any time after the bonds or other obligations herein or hereafter authorized, or any part thereof, shall have been issued, the Council shall find it desirable to refund said bonds or other obligations, said bonds or other obligations, or any part thereof, may be refunded (but only with the consent of the holder or holders thereof, unless the bonds or other obligations have matured, or are then callable for prior redemption and have been properly called), without changing the priority of the lien for the payment of the refunding obligations on the revenues of the system; and the refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of said bonds or other obligations which is not refunded, if any there be; and the holder or holders of the refunding bonds or other obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of the bonds or other obligations refunded thereby. The refunding bonds of other obligations shall be issued, subject to the provisions of paragraph G of Section 21 of this ordinance, with such details as the Council may by ordinance provide; provided, however, that if only a part of the outstanding bonds or other obligations is refunded, and if such bonds or other obligations is refunded, and if such bonds or other obligations are refunded in such manner that the interest rate thereof is increased or if any refunding obligation matures at an earlier date than the maturity date of the corresponding obligations refunded thereby, then such obligations may not be refunded thereby, then such obligations may not be refunded without the consent of the holders of the unrefunded portions of said obligations; and that the refunding bonds or other obligations shall either be sold for cash at not less than the par value and accrued interest, and the proceeds thereof shall be used to pay the bonds refunded, or if so permitted by law and then only with the consent of the holder or holders of the bonds or other

obligations refunded, the refunding bonds or other obligations shall be delivered dollar for dollar in exchange for the bonds or other obligations refunded.

**SECTION XXIII: EQUALITY OF BONDS** That the bonds authorized to be issued hereunder and from time to time outstanding shall not be entitled to any priority one over the other in the application of the revenues of the system, regardless of the time or times of their issuance, it being the intention of the Council that there shall be no priority among the bonds authorized to be issued pursuant to this ordinance regardless of the fact that they may be actually issued and delivered at different times.

**SECTION XXIV: PROTECTIVE COVENANTS**. That the City hereby covenants and agrees, so long as any of the bonds hereby authorized are outstanding and unpaid, with each and every holder thereof:

**A. USE OF BOND PROCEEDS**. That the City, with the proceeds derived from the sale of the bonds herein authorized will proceed to improve, better and extend the system without delay, as hereinabove provided.

**B. PAYMENT OF BONDS HEREIN AUTHORIZED**. That the City will promptly pay the principal of and the interest on every bond issued hereunder and secured hereby at the place, on the dates and in the manner specified herein and in said bonds and in the coupons thereto appertaining according to the true intent and meaning hereof. Such principal and interest are payable solely from the net income to be derived from the operation of the resultant rates and charges for the use of, and the products and service rendered by, the joint water and sewer system, and nothing in the bonds or coupons or in this ordinance shall be construed as obligating the City to redeem any of said bonds, principal or interest, from, and the holder or holders thereof may not look to, any general or other fund except the income which is pledged under the provisions of this ordinance.

**C. USE CHARGES**. That while the bonds authorized herein or any of them remain outstanding and unpaid, the rates for all services rendered by the system to the City shall be in habitants and to all consumers within or without the boundaries of the City shall be reasonable and just, taking into account and consideration the cost and value of the system and the cost of maintaining and operating the system, and the proper and necessary allowances for the depreciation thereof and the amounts necessary for the retirement of all bonds and other securities or obligations payable from the revenues of the system the accruing interest thereon, and reserves therefor; and there shall be charges against all purchasers of service, including the City, such rates and amounts as shall be adequate to meet the requirements of this and the preceding sections hereof, and which shall be sufficient to produce revenues of earnings to pay annually the annual operating and maintenance charges, and on hundred forty per centum (140%) of both the principal of and interest on bonds and any other obligations payable annually from the revenues thereof, excluding the reserves therefor, all of which revenues, including those received from the City, shall be subject to distribution to the payment of the cost of operating and maintaining the system and the payment of principal of and interest on all obligations payable from the revenues of the system, including reasonable reserves therefor; that no free service, facilities or commodities shall be furnished by said system; that should the City elect to use for municipal purposes the water or sewer facilities of said system, or in any other manner use the system, or any part thereof, any use of the system by or of the services rendered thereby

to the City, or any department, board or agency thereof, will be paid for from the City's general fund or other available revenues at the reasonable value of the use so made, or service, facility or commodity so rendered; that all the income so derived from the City shall be deemed to be income derived from the operation of the system, to be used and accounted for in the same manner as any other income derived from the operation of said system.

**D. LEVY OF CHARGES.** That the City will forthwith and in any event prior to the delivery of any of the bonds herein authorized, fix, establish and levy the rates and charges which are required by paragraph C. of Section 24 of this ordinance, if such action be necessary therefor. No reduction in any initial rate schedule for the system may be made unless:

(1) The City has fully complied with the provision of Section 19 of this ordinance for at least the full fiscal year immediately preceding such reduction of the initial rate schedule.

(2) The audit required by a certified public accountant by paragraph H of this Section 24 of this ordinance for the full fiscal year immediately preceding such reduction discloses that the estimate revenues resulting from the proposed rate schedule, after its proposed reduction, will be sufficient to pay an amount at least equal to the annual cost for said period of operation and maintenance, and, in addition, one hundred forty per centum (140%) of both the principal of and the interest on bonds and any other obligations payable from the revenues of the system, including reasonable reserves therefor.

**E. EFFICIENT OPERATION.** That the City will operate said system so long as any of the bonds herein authorized are outstanding, to maintain said system in efficient operating condition and to make such improvements, extensions, enlargements, repairs and betterments thereto as may be necessary or advisable to insure its economical and efficient operation at all times and to an extent sufficient to supply public or private demands for service within the City and the territory adjacent thereto.

**F. RECORDS.** That so long as any of the bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the system. Such books shall include (but not necessarily be limited to), monthly records showing:

(1) The number of water customers and of sewer customers.

(2) The revenues received from water charges and from sewer charges by classes of customers.

(3) A detailed statement of the expenses of the system.

**G. RIGHT TO INSPECT.** That any holder of any of the bonds, or any duly authorized agent or agents of such holder, shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect the system and all properties comprising said system.

**H. AUDITS.** That the City further agrees that it will, within sixty days following the close of each fiscal year, cause and audit of such books and accounts to be made by a certified public

accountant, showing the receipts and disbursements for the account of the system, and that such audit will be available for inspection by any holder of any of the bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

- (1) A statement in detail of the income and expenditures of the system for such fiscal year.
- (2) A balance sheet as of the end of such fiscal year, including all funds created by the various ordinances and other proceedings authorizing the issuance of outstanding bonds and other obligations payable from the revenues of the system.
- (3) The accountant's comment regarding the manner in which the City has carried out the requirements of this ordinance, and any other ordinance and other proceedings authorizing the issuance of outstanding bonds or other obligations payable from the revenues of the system, and the accountants recommendation for any change or improvement in the operation of the system.
- (4) A list of the insurance policies in force at the end of the fiscal year, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer and the expiration date of the policy.
- (5) A recapitulation of each fund or account created by the various ordinances and other proceedings authorizing the issuance of outstanding bonds and other obligations payable from the revenues of the systems, into which fund are put monies derived from the operation of the system or derived from the sale of the securities, such analysis to show the balance in such fund at the beginning of the fiscal year, the deposits and withdrawals during said year, and the balance at the end of said year.
- (6) The number of any metered water connections, any unmetered water connections, any metered sewer connections and any unmetered sewer connections at the beginning and at the end of the year.
- (7) The number of customers per class of customers, if there be classes of customers, and revenues per class of customers.

All expenses incurred in the making of the audits and reports required by this section shall be regarded and paid as a maintenance and operations expense. The City agrees to furnish forthwith a copy of each of such audits and reports to the holder of any of the bonds at his request, and without request:

- (1) To the original purchaser of said bonds ( or any managing partner of a purchasing syndicate) form the City, and
- (2) To the Rexburg Branch of the First Security Bank of Idaho, In Rexburg, Idaho, i.e., the above-named paying agent bank or to any successor depository bank, after each such audit and report has been prepared, and that any such holder shall have the right to discuss with the accountant or persons making the audit and report has been prepared, and that any such holder shall have the right to discuss with the accountant or persons making the audit and report the contents thereof and to ask for such additional information as he may reasonably require.

**I. BILLING PROCEDURE.** That all bills for water service or facilities, or sewer service or facilities, or both water and sewer, furnished or served by or through the system shall be rendered to customers on a regularly established day of each and every month either

monthly in advance or in the month next succeeding the month in which the service was rendered and shall be due within twenty days from the date rendered; and in the event said bills are not paid within ninety days after the date when rendered, the rates and charges due shall be collected in a lawful manner, including but not limited to the denial of water service and the cost of disconnection and reconnection thereof. Sewer charges shall be billed jointly with charges for water service or facilities; and each such bill shall show separately water and sewer charges. In no case shall payment be accepted from a user of both such services unless payment is made in full for each such service.

**J. USE OF BOND AND RESERVE FUNDS.** That the “City of Rexburg Joint Water and Sewer Revenue Bonds, Series January 1, 1963, Interest and Bond Retirement Fund,” and the “City of Rexburg Joint Water and Sewer Revenue Bonds, Series January 1, 1963, Reserve Fund,” shall be used solely and only and said funds are hereby pledged, for the purpose of paying the interest on and the principal of the bonds herein authorized, except such monies in said Bond. Fund and in said Reserve Fund as are in excess of the interest on and principal of said bonds, both accrued and not accrued, to their respective maturities, and except such monies in said Reserve Fund in excess of the specified Minimum Reserve, as hereinabove prescribed.

**K. CHARLES AND LIENS UPON SYSTEM.** That from the revenues of the system the City will pay all taxes and assessments or other municipal or governmental charges, if any, lawfully levied, assessed upon or in respect of said system, or any part thereof, when the same shall become due, and it will duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of said system, that it will not create or suffer to be created and lien or charge upon said system or upon the revenues therefrom except as permitted by this ordinance, or that it will make adequate provision to satisfy and discharge within sixty days after the same shall accrue all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon said system or upon the revenues therefrom; provided however, that nothing herein shall require the City to pay or cause to be discharged, or make provision for any such tax assessment, lien or charge before the time when payment thereof shall be due or so long as the validity thereof shall be due or so long as the validity thereof shall be contested in good faith by appropriate legal proceedings.

**L. COMPLETION BOND.** That the City will require each person, firm or corporation with whom it may contract for labor or materials of construction to furnish a performance bond in the full amount of any contract exceeding \$5,000.00 in amount, or in lieu thereof to deposit with the Treasurer of the City, of insure completion and performance, marketable securities having a market value equal to the amount of such contract, eligible as security for the deposit of trust funds under the regulations of the Board of Governors of the Federal Reserve System. In the event of default under such contract and upon being notified in writing of such default by the Mayor of the City, its Treasurer shall sell any securities so deposited at the prevailing market to the extent requested by the Mayor, and will apply the proceeds to the removal of such default as directed by the Mayor. Any such contract for labor or materials of construction will provide that payment thereunder shall not be made by the City in excess of ninety per centum (90% of the current estimates until the completion of the project and its acceptance by the City.

**M. INSURANCE.** That the City in its operation of the system will carry fire and extended coverage insurance, workmen's compensation insurance and public liability insurance and other types of insurance in such amounts and to such extent as is normally carried by private corporations operating public utilities of the same type. The cost of such insurance shall be considered one of the operating costs of the system. In the event of property loss or damage, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged, any remainder shall be subject to distribution in the manner provided hereinabove in Section 19 of this ordinance for net income and revenues derived from the operation of the system.

**N. COMPLETING SYSTEM.** That as long as any of the bonds hereby authorized are outstanding, the City shall not grant any franchise or license to a competing system, nor shall it permit, during said period (except as it may legally be required to do so) any person, association, firm or corporation to sell water or sewer service or facilities, or any combination thereof, to any consumer, public or private, within the City.

**O. ALIENATING SYSTEM.** That the City will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the system, or any part thereof, including any and all extensions and additions that may be made thereto, until all the bonds herein authorized to be issued shall have been paid in full, both principal and interest, except that the City may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the system, but in no manner nor to such extent as might prejudice the security for the payment of the bonds herein authorized, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net income or revenues of the system in accordance with the provisions of Section 19 of this ordinance.

**P. EXTENDING INTEREST PAYMENTS.** That in order to prevent any accumulation of coupons or claims for interest after maturity the City will not directly or indirectly, extend or assent to the extension of the time for the payment of any coupon or claim for interest on any of the bonds issued hereunder and it will not directly or indirectly be a party to or approve any arrangement for any such extension or for the purpose of keeping alive any of said coupons; and in case the time for payment of any such coupons shall be extended, such coupons or installments or interest after such extension or arrangement shall be entitled in case of default hereunder to the benefit or security of this ordinance except subject to the prior payment in full of the principal of all bonds issued hereunder and then outstanding, and of matured interest on such bonds the payment of which has not been extended.

**Q. MANAGEMENT OF SYSTEM.** That the City shall appoint a manager of the system with suitable experience in the operation of similar systems. In the event of default on the part of the City in paying principal of or interest on said bonds promptly as each falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of sixty days, or if the net revenue of the system in any fiscal year should fail to equal at least the amount of the principal of and interest on the revenue bonds and other obligations (including all reserves therefor specified in the authorizing proceedings, including but not limited to the ordinance payable from said net revenue in the fiscal year, the City shall retain a firm of competent management engineers skilled in the operation of joint water and sewer systems to assist the manager of the system so long as such default continues or

the net revenues are less than the amount hereinabove designated. The manager shall have full control over the system and shall operate the system for the City, and shall enforce such reasonable rates and charges as will be sufficient to make the payments required by this ordinance, and shall in all things so operate the system as to comply fully with all of the requirements and provisions of this ordinance. The right of the holder or holders of the bonds herein authorized to require the retention of such management engineers shall not be exclusive, and in the event of default as herein outlined, such holder or holders shall have the right to proceed in law or equity to require the performance of the covenants herein contained in any action which to them shall seem appropriate, as hereinafter provided in Sections 25, 26, and 27 of this ordinance.

**R. SURETY BONDS.** That each municipal official or other person having custody of any funds derived from operation of the system, or responsible for their handling, shall be bonded in an amount at least equal to the total funds in his custody at any one time, which bond shall be conditioned upon the proper application of said funds. The cost of each such bond shall be considered one of the operating costs of the system.

**S. PERFORMING DUTIES.** That the City will faithfully and punctually perform all duties with respect to the system required by the Constitution and laws of the State of Idaho and the ordinances and resolutions of the City, including but not limited to the making and collecting of reasonable and sufficient rates and charges for service rendered or furnished by the system as hereinbefore provided, and the proper segregation of the revenues of the system aid their application to the respective funds.

**T. OTHER LIENS.** That other than as provided by this ordinance, there are no liens or encumbrances of any nature, whatsoever on or against said system or the revenues derived or to be derived from the operation of the same.

**U. CORPORATE EXISTENCE.** That the City will maintain its corporate identity and existence so long as any of the bonds herein authorized remain outstanding.

**SECTION XXV: EVENTS OF DEFAULT.** That each of the following events is hereby declared an "event of default," that is to say:

**A.** Payment of the principal of any of the bonds herein authorized to be issued shall not be made when the same shall become due and payable, either at maturity or by proceedings for prior redemption or otherwise.

**B.** Payment of any installment of interest shall not be made when the same becomes due and payable or within thirty days thereafter.

**C.** The City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

**D.** The City shall make default in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the bonds or in this ordinance on its part to be performed, and if such default shall continue for sixty days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by the holders of twenty -five percent in principal amount of the bonds then outstanding.

**SECTION XXVI: REMEDIES FOR DEFAULTS.** That upon the happening and continuance of any of the events of default as provided in Section 25 of this ordinance, then and in every case the holder or holders of not less than twenty -five per centum (25%) in principal amount of the bonds then outstanding, including but not limited to a trustee or trustees therefor, any proceed against the City, its governing body, and its agents, officers and employees to protect and enforce the rights of any bondholder under this ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award of execution of any power granted for the enforcement of any proper, legal or equitable remedy as such bondholder or bondholders may deem most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or a violation of any right of any bondholder, or to require the governing body of the City to act as if it were the trustee of and expressed trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the bonds and coupons then outstanding. Any receiver appointed in any proceedings to protect the rights of the bondholders hereunder, the consent to any such appointment being hereby expressly granted, may enter and take possession of the system, operate and maintain the same, prescribe rates, fees or charges and collect, receive and apply all revenues arising after the appointment of such receiver in the same manner as the City itself might do. The failure of any bondholder so to proceed shall not relieve the City or any of its officers, agents, or employees of any liability for failure to perform any duty. Each right or privilege of any bondholder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege, by or on behalf or any bondholder shall not be deemed a waiver of any other right or privilege thereof.

**SECTION XXVII: DUTIES UPON DEFAULTS.** That upon the happening of any of the events of default as provided in Section 25 of this ordinance, the City in addition, will do and perform all proper acts on behalf of and for the bondholders to protect and preserve the security created for the payment of their bonds and to insure the payment of the principal of and interest on said bonds promptly as the same become due. All proceeds derived therefrom, so long as any the bonds herein authorized, either as to principal or interest, are outstanding and unpaid, shall be paid into the Bond Fund, or in the event of outstanding bonds issued during said period of time on a parity with the bonds herein authorized, into such bond funds on an equitable and pro-rated basis, and used for the purposes therein provided. In the event the City fails or refuses to proceed as in this section provided, the holder or holders of not less than twenty -five per cent in principal amount of the bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the bondholders as hereinabove provided.

**SECTION XXVIII: PRIOR CHARGE UPON LOWER RATES.** That if it should be legally determined that any legislative or other body, commission or authority has power to lawfully prescribe a lower schedule of rates than that contemplated by this or other ordinances, and if such lower rate shall be prescribe a lower schedule or rates than that contemplated by this or other ordinances, and if such lower rate shall be prescribed, then the payment of interest on and the principal of said bonds, issued pursuant to the provisions of this ordinance, shall constitute a first and prior charge on the revenues received from said system, together with the bonds and other obligations the lien or lien thereon of the bonds herein authorized, anything in this ordinance contained to the contrary notwithstanding.

**SECTION XXIX: DEFINITION OF SYSTEM.** That notwithstanding any provisions contained herein, the term “system” shall be construed to mean all properties, real, personal, mixed, or otherwise, now owned or hereafter acquired by the City of Rexburg through purchase, construction, or otherwise, and used in connection with the joint water and sewer system of the City, and in anywise appertaining thereto, whether situated within or without the limits of the City; and the term “revenues” or “income” from the system shall include all income and revenue derived by the City from the operation of the municipal joint water and sewer system, or any part thereof, whether resulting from improvements, extensions, enlargements, repairs or betterments to the system, or otherwise, and shall include all revenues received by the City of Rexburg, or any municipal corporation succeeding to the rights of the City of Rexburg, from said system and from the sale of water and sewer service, facilities, or commodities, or any combination thereof, to the inhabitants of what is now the City of Rexburg, (including all territorial annexations which may be made while said revenue bonds or any part thereof are outstanding), or from the sale of water and sewer service, facilities or commodities or any combination thereof, by means of said system owned and operated by the City as the same may at any time exist to serve customers outside the City limits as well as customers within the City limits.

**SECTION XXX: COMPULSORY SEWER CONNECTION.** That the Council has determined, and does hereby determine, that it is for the best interest of the City and the inhabitants thereof for health and sanitary purposes that inhabited property be connected to the sewer facilities of said system; and the Council hereby orders that the owners of inhabited property within the City, any boundary of such property being within 150 feet of a sewer service line, shall connect such property to the line without expense to the City within 130 days from the date of publication of this ordinance, or if such a line is not then available within 130 days from the date such a line is extended to within 150 feet of a boundary line of the tract or parcel of land. In the event that any tract or parcel of land is not so connected within the period of time hereinabove designated, in addition to all other fees, tolls and charges levied and collected in connection with the system, a connection fee of \$100.00 is hereby levied there against and shall be promptly collected from the owner or owners thereof. The City shall also enforce and compel such connection in the case of a failure so to connect within the time herein prescribed by suit, action, or special proceedings in equity or at law; and the City may prescribe rules and regulations to govern, regulate and enforce such connections, including but not limited to fixing penalties for the failure so to connect, and to entering into agreements with any other public corporation or political subdivision of the State of Idaho, or any agency or instrumentality thereof, e.g., the County of Madison or its health department, if any, necessary or desirable to effect the provisions hereof.

**SECTION XXXI: DELEGATED POWERS.** That the officers of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including, without limiting the generality of the foregoing:

**A. PRINTING BONDS.** The printing of the bonds herein authorized, including, if specified by the purchaser, on each a certified true copy of bond council’s approving opinion; and

**B. FINAL CERTIFICATES.** The execution of such certificates as may be reasonably required by the purchasers thereof relating, inter alia, to the signing of the bonds, the tenure and identity of the municipal officials, delivery of the bonds and the receipt of the bond purchase price and the absence of litigation, pending or threatened, affecting the validity thereof.

**SECTION XXXII: AMENDMENT OF ORDINANCE.**

**A. LIMITATIONS UPON AMENDMENTS.** That this ordinance may be amended or supplemented by ordinances adopted by the Council in accordance with the laws of the State of Idaho, without receipt by the City of any additional consideration, but with the written consent of the holder of three-fourths of the bonds authorized by this ordinance and outstanding at the time of the adoption of such amendatory or supplemental ordinance (not including in any case any bonds which may then be held or owned for the account of the City but including such refunding bonds as may be issued for the purpose of refunding any of the bonds herein authorized if such refunding bonds are not owned by the City): provided, however, that no such ordinance shall have the effect of permitting:

- (1) An extension of the maturity of any bond authorized by this ordinance; or
- (2) A reduction in the principal amount of any bond, the rate of interest thereon, or the prior redemption premium payable thereon; or
- (3) The creation of a lien upon or a pledge of revenues ranking prior to the lien of pledge created by this ordinance; or
- (4) A reduction of the principal amount of the bonds required for consent to such amendatory or supplemental ordinance; or
- (5) The establishment of priorities as between bonds issued and outstanding under the provisions of this ordinance; or
- (6) The modification of or otherwise affecting the rights of the holders of less than all of the bonds then outstanding.

**B. NOTICE OF AMENDMENT.** Whenever the City shall propose to amend or modify this ordinance under the provisions of this section, it shall cause notice of the proposed amendment to be published one time in a financial newspaper or journal published in Salt Lake City, Utah. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory ordinance is on file in the office of the Clerk for public inspection.

**C. TIME FOR AMENDMENT.** Whenever at any time within one year from the date of the publication of the said notice there shall be filed in the office of said Clerk an instrument or instruments executed by the holders of at least seventy-five per centum (75 %) in aggregate amount of the bonds then outstanding as in this section defined, which instrument or instruments shall refer to the proposed amendatory ordinance described in said notice and shall specifically consent to and approve the adoption thereof, thereupon, but not otherwise, the Council may adopt such amendatory ordinance shall become effective.

**D. BINDING CONSENT TO AMENDMENT.** If the holders of at least seventy-five per centum (75%) in aggregate principal amount of the bonds outstanding as in this section defined, at the time of the adoption of such amendatory ordinance, or the predecessors in title of such holders, shall have consented to and approved the adoption thereof as herein provided, no holder of any bond whether or not such holder shall have consented to or shall have revoked any consent as in this section provided, shall have any right or interest to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the City from taking any action pursuant to the provisions thereof.

**E. TIME CONSENT BINDING.** Any consent given by the holder of a bond pursuant to the provisions of this section shall be irrevocable for a period of six months from the date of the

publication of the notice above provided for and shall be conclusive and binding upon all future holders of the same bond during such period. Such consent may be revoked at any time after six months from the date of the publication of such notice by the holder who gave such consent or by a successor in title by filing notice of such revocation with the Clerk but such revocation shall not be effective if the holders of seventy -five per centum (75%) in aggregate principal amount of the bonds outstanding as in this section defined have, prior to the attempted revocation, consented to and approved the amendatory ordinance referred to in such revocation.

**F. PROOF OF INSTRUMENTS.** The fact and date of the execution of any instrument under the provisions of this section may be proved by the certificate of any officer in any jurisdiction who by the laws is authorized to take acknowledgment of deeds within such jurisdiction, that the person signing such instrument acknowledged before him the execution thereof, or may be proved by an affidavit of a witness to such execution sworn to before such officer.

**G. PROOF OF BONDS.** The amount and numbers of the bonds held by any person executing such instrument and the date of his holding the same may be proved by a certificate executed by a responsible bank or trust company showing that on the date therein mentioned such person had on deposit with such bank or trust company the bonds described in such certificate.

**SECTION XXXIII: ORDINANCE IRREPEALABLE.** That after any of the bonds herein authorized are issued, this ordinance shall be and remain irrevocable until the bonds and the interest thereon shall be fully paid, cancelled, and discharged, as herein provided.

**SECTION XXXIV: SEVERABILITY CLAUSE.** That if any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

**SECTION XXXV: REPEALER CLAUSE.** That all by-laws orders, resolutions and ordinances, or parts thereof, inconsistent herewith or hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any by-laws, order, resolution or ordinance, or part thereof, heretofore repealed.

**SECTION XXXVI: EMERGENCY CLAUSE AND EFFECTIVE DATE.** That, by reason of the fact that the City of Rexburg needs to improve, better and extend its joint water and sewer system by construction of a sewage stabilization pond and interceptor lines, and improving, bettering and extending its municipal sewer collection system, and forthwith abate a serious health problem, it is hereby declared that an emergency exists, consisting of "riot, infectious or contagious disease, or other impending danger," that this ordinance is necessary to the immediate preservation of the public ease, health and safety, and that it shall be in full force and effect from and after its passage, approval and publication, as provided by law.

PASSED AND APPROVED by the City Council of the City of Rexburg, Idaho, this 2nd day of January 1963.

CITY COUNCIL

\_\_\_\_\_  
MAYOR

(SEAL)

ATTEST:

\_\_\_\_\_  
CITY CLERK

Councilman A. H. Brock seconded the motion for the adoption of said ordinance.

The Clerk was then instructed to call the roll on the passage of the ordinance and the roll call on said passage of said ordinance resulted as follows;

**Those Voting Aye:**

John C. Porter  
Laurin Ashliman  
A. L. Klingler  
A. H. Brock  
Charles W. Zollinger

**Those Voting Nay:**

None

**Those Absent:**

Gordon Smith

The ordinance was thereupon declared by the Mayor to have been duly passed.

It was moved by Councilman Laurin Ashliman and seconded by Councilman A. L. Klingler that the Clerk of the City be ordered to publish said ordinance in full immediately and in at least one issue of the Rexburg Journal, a newspaper of general circulation in the City of Rexburg, Madison County, Idaho.

Thereupon, the Clerk was ordered to call the roll on said motion and the roll call upon said motion was as follows:

**Those Voting Aye:**

John C. Porter  
Charles W. Zollinger  
Laurin Ashliman