

RESOLUTION NO. 249

A RESOLUTION OF THE CITY OF PAYETTE, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF A PROMISSORY NOTE TO THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY, IN THE PRINCIPAL AMOUNT OF \$1,199,022.57, AS EVIDENCE OF A LOAN INDEBTEDNESS INCURRED BY THE CITY FROM THE WASTEWATER FACILITY LOAN ACCOUNT OF THE STATE FOR THE PURPOSE OF PAYING THE COST OF SANITARY SEWER SYSTEM IMPROVEMENTS; PROVIDING FOR THE ISSUANCE, FORM, EXECUTION, REGISTRATION, MATURITY, AND PAYMENT OF THE NOTE; ESTABLISHING FUNDS AND ACCOUNTS; PROVIDING COVENANTS RELATING TO THE NOTE AND THE TAX-EXEMPT STATUS OF THE INTEREST ON THE NOTE; PROVIDING FOR RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Payette, Payette County, Idaho (the "City"), is a municipal corporation duly organized and operating under and pursuant to the laws of the State of Idaho; and

WHEREAS, the City presently owns and operates, and has for many years owned and operated, a municipal sanitary sewer collection and treatment system for the benefit of the residents of the City; and

WHEREAS, the Mayor and Council of the City, by adoption of Resolution No. 230 on July 5, 2000, heretofore determined that the acquisition and construction of certain improvements to the existing sanitary sewer treatment facilities of the City (the "Improvements"), were necessary; and

WHEREAS, the Mayor and Council further determined that the indebtedness to be incurred thereby was an ordinary and necessary expense of the City within the meaning of Article 8, Section 3, Idaho Constitution, for which no approval of the electors of the City was necessary; and

WHEREAS, The City caused to be filed, in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Payette (the "District Court") a Petition for Judicial Confirmation pursuant to Title 7, Chapter 13, Idaho Code, seeking a judicial determination and declaration of the validity of the City's incurring of an indebtedness and issuing its promissory note in a principal amount not to exceed \$1,200,000 as evidence thereof for the purpose of financing the cost of the Improvements; and

WHEREAS, on September 1, 2000, the District Court, in Case No. CV-OC-00-0066404\*D, entered its Findings of Fact, Conclusions of Law, and Judgment (the "Judicial Confirmation Order") ordering, adjudging, and decreeing that (1) the loan agreement with the State constitutes a valid "ordinary and necessary expense" of the City within the meaning of Article

8, Section 3, of the Idaho Constitution, for which no approval of the City's electors is required; (2) the loan agreement, promissory note, or other evidence of indebtedness, when duly executed and delivered, will constitute valid and enforceable special obligations of the City, enforceable in accordance with their terms, and (3) the City may pledge its sanitary sewer system revenues to the payment thereof; and

WHEREAS, pursuant to the Judicial Confirmation Order, the City and the State entered into the loan agreement, the City has constructed and installed the improvements, and the City now desires to issue its promissory note in the principal amount of \$1,199,022.57 to the State in accordance with the loan agreement and Judicial Confirmation Order.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PAYETTE, Payette County, Idaho, as follows:

Section 1: DEFINITIONS

As used in this Resolution, the following terms shall have the following meanings.

City means the City of Payette, Payette County, Idaho.

City Clerk or Clerk means the Clerk of the City, or other officer of the City who is the custodian of the records, seal, and proceedings of the City.

Cost of Project means all or any part designated by the Council of the cost acquisition, construction, and installation of the sanitary sewer improvement Project.

Council means the City Council of the City.

Mayor means the Mayor of the City, including his/her successor in functions, if any.

Net Revenues means the Revenue of the System after the deduction of Operation and Maintenance Expenses.

Note means the Wastewater Facility Loan Account Promissory Note of the City in the initial principal amount of \$1,199,022.57, authorized by this Resolution.

Note Payment Fund means the fund created by Section 9 of this Resolution for the payment of the principal of and interest on the Note.

Note Registrar means the registrar and paying agent appointed and designated in Section 5 of this Resolution.

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 Note; 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 pertaining 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 Note 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 Note and to the ordinary operation of the System; and

(7) All other administrative, general, and commercial expenses.

Project means the sanitary sewer system improvement project described in Section 2 of this Resolution.

Registered Owner means the purchaser of the Note and any subsequent transferee of the Note.

Reserve Fund means the Reserve Fund created by Section 9 of this Resolution.

Resolution means this Resolution No. 249, adopted on April 7, 2003.

Revenue of the System shall mean 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.

Revenue Fund means the "City of Payette Sewer Revenue Fund" created by Section 8 of this Resolution.

State, for purposes of this Resolution, means the State of Idaho Department of Environmental Quality.

System for purposes of this Ordinance, means the sanitary sewer collection and treatment system of the City, as the same 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 Note to be issued hereunder will be derived, and the lands pertaining thereto.

#### Section 2: THE PROJECT

The sewer improvement project consists of the acquisition, construction, and installation of improvements and betterments to the City's sanitary sewer system, consisting generally of replacement of ineffective existing influent comminution with a new fine screen designated to remove and dispose of solid inorganic material from the influent stream; replacement of the existing undersized grit removal system with a new vortex-type grit chamber to remove high specific gravity solids prior to secondary treatment; upsizing a portion of the plant's yard piping; re-routing the return activated sludge line; and replacing several aged components of the plant, together with related improvements and costs (the "Project"). \$1,199,022.57 of the Costs of the Project shall be paid from the proceeds of the Note.

#### Section 3: THE NOTE

The Note shall be substantially in the form annexed hereto as Exhibit "A"; shall be issued to the State of Idaho Department of Environmental Quality (the "State"), as Registered Owner; shall be in the principal amount of 1,199,022.57; shall be dated as of February 1, 2003, shall mature twenty (20) years from its date, and shall, with written permission of the Registered Owner be subject to prepayment, in whole or in part, without penalty, on any

date; and shall bear interest at the rate of four percent (4.0%) per annum on the unpaid principal balance from its date of issuance. Principal of and interest on the Note shall be payable in semi-annual installments of \$43,831.17, commencing on August 1, 2003, and continuing on each February 1 and August 1 thereafter until the Note is paid in full.

Section 4: EXECUTION OF NOTE

The Note shall be executed in the name of the City by the manual signature of the Mayor and attested by the manual signature of the City Clerk, and the seal of the City shall be impressed thereon.

Section 5: REGISTRATION OF NOTE

The Note shall be registered in the name of the State as the Registered Owner, both as to principal and as to interest, with the City Treasurer, who is hereby designated as registrar and paying agent with respect to the Note, and any transfer must likewise be registered.

Section 6: PAYMENT

The Note 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 in the registration books of the City.

Section 7: PLEDGE OF NET REVENUES

The Note shall be payable from the Net Revenues of the sanitary sewer System of the City. The Net Revenues are hereby pledged for the payment of the Note.

Section 8: THE REVENUE FUND

There is hereby created a special fund, designated the "City of Payette Sewer Revenue Fund" (the "Revenue Fund"), which shall be maintained by the Treasurer and into which the Revenue of the System shall be deposited immediately upon its receipt.

A. Use of Revenues. The Revenue of the System shall be used for the 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 Note by payment into the Note Payment Fund, as provided in Section 9 of this Resolution.

(3) Third Charge and Lien: To maintain the Reserve Fund created by Section 10 of this Resolution; and

(4) To administer surplus funds.

B. Interest Earnings. Interest earnings on deposits in the Sewer Revenue Fund shall remain in and be used for the purposes of the Sewer Revenue Fund.

C. Surplus Funds. Funds remaining in the Revenue Fund after having been applied for the purposes provided in this section shall constitute surplus funds and may be used for any lawful purposes of the City.

Section 9: NOTE PAYMENT FUND

There is hereby created a special fund designated the "City of Payette Sewer System Note Payment Fund" (the "Note Payment Fund"), which shall be maintained by the Treasurer and into which shall be deposited, from the Net Revenues of the System, not less than two (2) days before each payment date, the amounts required by this Resolution to make the semiannual payments of principal of and interest on the Note. If for any reason the City does not have, on any payment date, Net Revenues in the Note Payment Fund sufficient to make the scheduled payment of principal and interest, the amount of such deficiency shall be deposited into the Note Payment Fund from the Reserve Fund.

Section 10: RESERVE FUND

There is hereby established a special fund and account, to be held by the Treasurer, as additional security for the Note, to be designated the Sewer System Note Reserve Fund (the "Reserve Fund"). The City covenants and agrees to accumulate in the Reserve Fund, in equal annual deposits from the Revenue Fund of \$17,532.47, commencing on February 1, 2004, and continuing on the same date each year thereafter through and including February 1, 2008, the amount of \$87,662.34, and to maintain the Reserve Fund until the Note is paid in full. Any transfer from the Reserve Fund to the Note Payment Fund shall be replenished from the Revenue Fund as soon as practicable after such transfer is made.

Section 11: GENERAL COVENANTS

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

A. Complete Project. It will complete the construction of the Project with all practical dispatch and in a sound and economical manner.

B. 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.

C. Good Repair. It will operate, maintain, preserve, and keep the System and every part hereof in good repair, working order, and condition.

D. Corporate Status. It will maintain its status as a municipal corporation of the State of Idaho and will take no steps to disincorporate or otherwise change its corporate status.

E. Preserve Security. It will preserve and protect the security of the Note and the rights of the Registered Owner thereof.

F. Collect Revenues. It will collect and hold in trust the revenues and other funds pledged to the payment of the Note and apply such revenue or other funds only as provided in this Resolution.

G. Service Note. It will pay and cause to be paid punctually the principal of the Note and the interest thereon on the date or dates and at the place or places and in the manner mentioned in the Note, and in accordance with this Resolution.

H. 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 Note or which might impair the security of the Note, to the end that the priority and security of the Note shall be fully preserved and protected.

I. 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 Note, nor which would otherwise impair or impede the rights of the Registered Owner of the Note with respect to such revenues of the operation of the System without provisions for the

retirement of the Note then outstanding from the proceeds thereof.

J. 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 such as may be required to adequately protect it and the Registered Owner of the Note 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 Note issued under this Resolution.

K. Fidelity Bonds. It will procure suitable fidelity bonds covering all of its officers and other employees charged with the operation of the System and the collection and disbursement of revenues therefrom.

L. 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 Note issued hereunder, upon request.

M. Accounts. It will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System, and it will furnish complete operating and income statements upon request.

N. Delinquencies. It will not furnish sewer service to any customer whatsoever free of charge, and it shall not later than sixty (60) days after an account becomes delinquent, take such legal action as may be reasonable to enforce collection of any collectible delinquent account.

#### Section 12: SPECIAL COVENANTS

The City further covenants with the Registered Owner of the Note as follows:

A. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the Note 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 Note to be issued in or converted to bearer form.

B. The Note is hereby designated a "qualified tax-exempt obligation" within the meaning and for the purposes of Section 265(b)(3) of the Code, and the City does not reasonably anticipate that it will designate more than \$10,000,000, including the Note, as qualified tax-exempt obligations during the calendar year 2003.

C. None of the proceeds of the Note 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 Note to be a "private activity bond," nor will it omit to take any action necessary to prevent the Note from becoming a "private activity bond," within the meaning of Section 141 of the Code.

D. The City has general taxing powers. The Note is not a "private activity bond" within the meaning of Section 141 of the Code. 95% or more of the net proceeds of the Note are to be used for the local governmental activities of the City. The City has no subordinate entities. The City does not reasonably anticipate that it will issue tax-exempt obligations during the calendar year 2003 in a face amount which exceeds \$5,000,000. Accordingly, under Section 148(f)(4)(D) 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 Note 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 Note is not and will not become includable in the gross income of the owners of the Note under the Code and applicable regulations. The City covenants and agrees that no use will be made of the proceeds of the Note, 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 Note, which would cause the Note 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 Note with the requirements of Section 148 of the Code and the regulations promulgated thereunder in order to prevent the Note 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 Note will be used to reimburse the City for capital expenditures made prior to the date of delivery of the Note 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 13: FURTHER AUTHORITY

The Mayor, City Clerk, and City Treasurer, or any one or more such officials, as shall be appropriate, are hereby authorized to execute such further certifications and other documents as may be necessary or appropriate to carry out the intent of this Resolution.

Section 14: EFFECTIVE DATE

This Resolution shall take effect and be in force from and after its passage and approval.

DATED this 7th day of April, 2003.

CITY OF PAYETTE  
Payette County, Idaho

By Mark S. Hebert  
Mayor

ATTEST:

John P. Furks  
City Clerk

( S E A L )