

ORDINANCE NO. 144

AN ORDINANCE OF THE CITY OF PECK, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A PARITY LIEN WATER REVENUE BOND, SERIES 2002, IN THE PRINCIPAL AMOUNT OF \$303,343.28 FOR THE PURPOSE OF FINANCING THE ACQUISITION OF IMPROVEMENTS TO THE DOMESTIC WATER SYSTEM OF THE CITY; DESCRIBING THE BOND; PROVIDING FOR THE COLLECTION AND DISPOSITION OF REVENUES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; ESTABLISHING FUNDS AND ACCOUNTS; PROVIDING COVENANTS RELATING TO THE BOND; PROVIDING FOR THE SALE OF THE BOND TO THE STATE OF IDAHO; PROVIDING FOR OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Peck, Nez Perce County, Idaho (the "City"), is a municipal corporation organized and operating under the laws of the State of Idaho; and

WHEREAS, the City owns and operates a domestic water treatment and distribution system and charges and collects rates, fees, and charges for the use of the system; and

WHEREAS, the Mayor and City Council (the "Council") of the City have determined that it is necessary and essential to the health, safety, comfort, and welfare of the City and its inhabitants that the City acquire, construct, and install certain improvements to its domestic water system; and

WHEREAS, the City is authorized by the Constitution and laws of Idaho to issue revenue bonds to finance all or part of the cost of acquisition, construction, and installation of improvements and betterments to the water system of the City; and

WHEREAS, the Council, by adoption of Ordinance No. 132 on December 16, 1998, ordered a special bond election to be held within the City on February 2, 1999, for the submission to the qualified electors of the City the question of whether or not the City should be authorized to issue its revenue bonds in the principal amount of \$325,000 in order to provide funds for the acquisition, construction, and installation of a sanitary Parity Lien Water system; and

WHEREAS, the requisite majority of the qualified electors of the City, at the special bond election of February 2, 1999, authorized the incurring of indebtedness and the issuance of revenue bonds in the amount of \$325,000; and

WHEREAS, the Council has determined that the public health, safety, and welfare will be furthered by the water system project described hereinafter and has further determined to issue water revenue bonds of the City, duly authorized by the electors of the

City at the special bond election of February 2, 1999, in an aggregate principal amount of \$303,343.28; and

WHEREAS, the City now has outstanding its Water Revenue Refunding Bonds, Series 1999 (the "Series 1999 Bonds"), in the remaining principal amount of \$15,200, issued on December 15, 1999, pursuant to Ordinance No. 138, adopted on December 8, 1999; and

WHEREAS Ordinance No. 138 provides that the City may issue the water revenue bonds approved at the special bond election of February 2, 1999, in a principal amount up to \$325,000, on a parity of lien with the Series 1999 Bonds; and

WHEREAS, Section 50-1036, Idaho Code, authorizes the sale of water revenue bonds at private sale in such manner as the Council may determine; and

WHEREAS, the State of Idaho, Department of Health and Welfare, Division of Environmental Quality (the "State"), has advanced interim financing moneys to the City for the project in the amount of \$303,343.28, including interest on funds so advanced to May 1, 2002; and

WHEREAS, the State has offered to purchase the revenue bonds of the City, and the Council has determined to issue its water revenue obligations to the State in the form of a single, amortized parity lien water revenue bond in an aggregate principal amount of \$303,343.28, dated and bearing interest from May 1, 2002.

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

Section 1: DEFINITIONS

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

A. Acquisition or Acquire includes the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the Federal Government, the State, any public body therein or any person or entity, the condemnation, transfer, option to purchase, other contract, or other acquirement, or any combination thereof.

B. Additional Bonds means any bonds or other obligations issued pursuant to Section 15 of this Ordinance.

C. Bond means the "City of Peck Parity Lien Water Revenue Bond, Series 2002," herein authorized to be issued, sold, and

delivered in the form of a single, fully registered, amortized revenue bond in the principal amount of \$303,343.28.

D. Bond Fund means the "City of Peck Water Revenue Bond Fund" referred to in Section 12 of this Ordinance.

E. Bond Register means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bond.

F. Bond Registrar means the bond registrar, transfer agent, and authenticating and paying agent appointed and designated in Section 3 of this Ordinance.

G. City means the City of Peck, Nez Perce County, Idaho.

H. City Clerk means the Clerk of the City, or other officer of the City who is the custodian of the seal of the City and of the records of the proceedings of the City, or his/her successor in functions, if any.

I. Construction Fund means the "City of Peck Water Project Construction Fund" created by Section 10 of this Ordinance.

J. Cost of Project or any phrase of similar import, means all or any part designated by the Council of the costs of the Project, or interest therein, which costs, at the option of the Council, may include all or any part of the incidental costs pertaining to the Project, including, without limitation:

(1) Preliminary expenses advanced by the City from funds available for the use therefor, or advanced by the Federal Government, or from any other source, with approval of the Council, or any combination thereof;

(1) The costs of making surveys, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;

(2) The costs of appraising, printing, estimates, advice, services of engineers, architects, financial consultants, attorneys at law, clerical help, or other agents or employees;

(3) The costs of contingencies;

(4) The costs of the issuance of the Bond;

(5) The costs of funding any short-term financing, bond anticipation notes, and other temporary loans pertaining to the Project and of the incidental expenses incurred in connection with such loans;

(6) The costs of any properties, rights, easements, or other interest in properties, or any licenses, privileges, agreements and franchises; and

(7) All other expenses necessary or desirable and pertaining to the Project, as estimated or otherwise ascertained by the Council.

K. Council means the City Council of the City.

L. Estimated Net Revenues means, for any year, the estimated Revenues of the System for such year less the estimated Operation and Maintenance Expenses for such year, based upon estimates prepared by the City Engineer or an independent engineer, or an independent certified public accountant. In computing Estimated Net Revenues, Revenues of the System may be adjusted as necessary to reflect any changed schedule of rates and charges.

M. Loan Agreement means the agreement between the City, as borrower, and the State of Idaho, Division of Environmental Quality, as lender, referred to in Section 22 of this Ordinance.

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

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

P. Operation and Maintenance Expenses or any phrase of similar import means all reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining, and repairing the System or of levying, collecting, and otherwise administering the Net Revenues for the payment of the Bond; and the term includes (except as limited by contract or otherwise limited by law) without limiting the generality of the foregoing:

(1) Engineering, auditing, reporting, legal, and other overhead expenses of the various City departments directly relating and reasonably allocable to the administration of the System;

(2) Fidelity bonds and property and liability insurance premiums 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 Bond issued by the City or pertaining to the Project, if any;

(6) Contractual services, professional services, salaries, other administrative expenses, and the cost of materials, supplies, repairs, and labor, pertaining to the issuance of the Bond and to the ordinary operation of the System; and

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

Q. Ordinance means this Ordinance No. 144, adopted on April 9, 2003.

R. Project means the water system improvement project described in Section 2 of this Ordinance.

S. Registered Owner means the purchaser of the Bond and any subsequent transferee or purchaser of the Bond.

T. Reserve Fund means the fund by that name created by Section 13 of this Ordinance.

U. Revenue Fund means the "City of Peck Water Revenue Fund" referred to in Section 11 of this Ordinance.

V. Revenue of the System means all revenues received by the City from its System and may include, at the discretion of the City, moneys derived from one, all, or any combination of revenue sources pertaining to the System, including, without limitation, rates, charges, rents, fees, and any other income derived from the operation or ownership of, the use of services of, or the availability of or services pertaining to, or otherwise derived in connection with, the System or all or any part of any property pertaining to the System.

W. Series 1999 Bonds means the City of Peck Water Revenue Refunding Bonds, Series 1999, issued in the original principal amount of \$34,000 pursuant to Ordinance No. 138, adopted on December 8, 1998.

X. State means the State of Idaho, Department of Health and Welfare, Division of Environmental Quality.

Y. System, for purposes of this Ordinance, means the domestic water treatment and distribution 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 water facilities from the operation of or in connection with which the revenues of the payment of the Bond to be issued hereunder will be derived, and the lands pertaining thereto.

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

Section 2: THE PROJECT

A. Project Description. The water system project consists of the acquisition, construction, and installation of improvements and betterments to the domestic water system of the City, including replacing the existing water treatment system, constructing a new water storage tank, and related improvements, and engineering, legal fees, administrative costs, payment of the principal of and interest on bond anticipation notes or other interim financing obligations issued to pay Project costs pending the issuance of the Bond, and all other costs incidental thereto (the "Project").

B. Project Changes. The Council may make changes in the Project prior to or in the course of actual construction, provided such changes are found necessary and desirable by the Council and that such changes do not substantially affect or alter the plans or the cost of the Project.

C. Costs. \$303,343.28 of the cost and expenses of construction and installation of the Project will be paid from the issuance and sale of the Bond, hereinafter defined, authorized to be issued at a special election held within the City on February 2, 1999. Any balance will be realized from the proceeds of the Note and from other legally available funds, including grant and loan funds.

Section 3: THE BOND

The Bond, designated "City of Peck Parity Lien Water Revenue Bond, Series 2002" (the "Bond"), in the aggregate principal amount of \$303,343.28, is hereby authorized to be issued, sold, and delivered pursuant to the Revenue Bond Act of the State of Idaho, the same being Sections 50-1027 through 50-1042, Idaho Code, and pursuant to Title 57, Chapter 9, Idaho Code.

The Bond shall consist of a single, transferable, amortized revenue bond, substantially in the form annexed hereto as Exhibit "A," shall be issued in fully registered form, shall be dated as of May 1, 2002, and shall bear interest from its date on the unpaid balance, at the rate of four percent (4.0%) per annum.

The Bond shall be payable in equal annual installments of principal and interest, with the first installment of principal and interest being due May 1, 2003, and annually on May 1 of each year thereafter until maturity. The final annual installment may be in such greater or lesser amount as is necessary to fully pay said Bond.

The principal of and interest on the Bond shall be fully paid within twenty (20) years from its date.

The sale of the Bond to the State of Idaho, Division of Environmental Quality (hereinafter the "Registered Owner"), is hereby authorized and approved.

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

Section 4: EXECUTION

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

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

Section 5: PLACE AND MANNER OF PAYMENT

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

Section 6: PREPAYMENT

The City hereby reserves the right to prepay, on any payment date, the principal amount outstanding, in whole or, in the manner hereinafter provided, in part, on any principal and interest payment date.

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

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

Section 7: DEFEASANCE

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

Section 8: CHARGES

The City has established, may from time to time revise, and shall maintain and collect water rates and charges for furnishing

the services of the System to its customers, which rates and charges are, and shall continue to be, uniform as to all persons or properties which are of the same class, which rates and charges shall be collected from the users thereof.

Section 9: PLEDGE OF REVENUES

The Net Revenues of the System are hereby pledged for the payment of the Bond on a parity of lien with the City's outstanding Series 1999 Bonds, and shall be used and applied in the order of priority provided in Section 11 of this Ordinance.

The City shall establish, revise, maintain, and collect charges sufficient, together with other net revenues of the City's domestic water system and other revenues received, after taking into consideration anticipated delinquencies, to provide Net Revenues equal to not less than 1.2 times the sum of the combined aggregate amount of the principal of and interest on the Bond which shall become due the next succeeding fiscal year.

Section 10: THE CONSTRUCTION FUND

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

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

Section 11: THE REVENUE FUND

There has heretofore been created by Ordinance No. 138, adopted on December 8, 1999, a special fund known as the "City of Peck Water Revenue Fund" (the "Revenue Fund"), which shall be maintained by the Treasurer and into which the Revenue of the System shall be deposited forthwith upon its receipt.

A. Use of Revenues. The Revenue of the System shall be used for payment of the following obligations in the following order of priority:

(1) First Charge and Lien: the costs of Operation and Maintenance Expenses.

(2) Second Charge and Lien: the principal of and interest on the Bond and on the Series 1999 Bonds by payment into the Bond Fund;

(3) Third Charge and Lien: to maintain the Reserve Fund as provided in Section 13 of this Ordinance; and

(4) To administer surplus funds.

B. Surplus Funds: Funds remaining in the Revenue Fund, after having been applied to the purposes provided in this Section, shall constitute surplus funds and may be used for the purposes set forth in Section 14 of this Ordinance.

Section 12: THE BOND FUND

There has heretofore been created a special fund known as the "City of Peck Water Revenue Bond Fund" (the "Bond Fund"), into which shall be deposited, from Net Revenues of the System, the following amounts:

A. Such amounts, in approximately equal monthly installments from the Revenue Fund, as will cause to be accumulated, not less than ten (10) days prior to each semiannual payment date, the amount sufficient to make each semiannual principal and interest payment on the Bond and on the Series 1999 Bonds the same becomes due. The moneys herein allocated shall be used solely to pay currently maturing installments of principal and interest on the Bond and the Series 1999 Bonds.

B. If the City for any reason shall fail to accumulate within the Bond Fund sufficient moneys to make the required semiannual principal and interest payment on the Bond as the same becomes due, then an amount equal to the deficiency shall be deposited into the Bond Fund, not less than ten (10) days prior to such payment date, from the Reserve Fund, described hereinafter.

Section 13: RESERVE FUND

A. Deposits. There has heretofore been created a special fund and account, separate from all other funds and accounts of the City, known as the "City of Peck Water Revenue Bond Reserve Fund" or other similar designation (the "Reserve Fund"), which shall be maintained by the Treasurer as a debt service reserve

fund for the Bond. There shall be accumulated in the Reserve Fund, in addition to any amounts required by Ordinance No. 138 authorizing the issuance of the Series 1999 Bonds, within ten (10) years from the date of the Bond, in approximately equal annual deposits, an amount equal to one year's principal and interest requirements on the Bond. The sum so accumulated shall be maintained as a debt service reserve fund for the Bond, until the Bond has been paid in full. No proceeds of the Bond shall be deposited into the Reserve Fund.

B. Deficiencies or Withdrawals. Whenever any moneys are withdrawn from the Reserve Fund to pay the principal of or interest on the Bond, or if a deficiency exists therein, the amount so withdrawn or the amount of such deficiency shall be restored within a period of one (1) year from the date of such deficiency by deposits from Net Revenues until there has been restored therein the gross amount provided heretofore in subdivision A of this Section.

C. Refunding. In the event refunding bonds are ever issued, the amount set aside into the Reserve Fund to secure the payment of the Bond may be used to retire bonds or may be held in the Reserve Fund to secure payment of the refunding bonds issued, to refund the outstanding refunding bonds, or may be held in the Reserve Fund to secure the payment of any other issue or series of bonds payable out of the Bond Fund and issued on a parity with the Bond.

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

Section 14: SURPLUS FUNDS

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

A. To pay the costs of unusual or extraordinary maintenance of or repair to the System;

B. To pay the principal of and interest on any subordinate lien obligations which may have been issued to provide water facilities in or for the City;

C. To improve, extend, enlarge, or replace any water facilities;

D. To acquire or construct additional water facilities in or for the City;

E. To prepay the principal, interest, and any costs of the Bond; and

F. For any other lawful purpose.

Section 15: ADDITIONAL BONDS OR OTHER OBLIGATIONS

A. Limitation Upon Issuance of Parity Obligations.
Nothing contained in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other additional obligations payable from the Net Revenues on a parity with, but neither prior nor superior to, the lien of the Bond herein authorized; provided, however, that before any such additional parity bonds or other additional parity obligations are authorized or actually issued:

(1) The City is not, and has not been, in default as to any payments required by the provisions of this Ordinance for a period of not less than twelve (12) months immediately preceding the issuance of such additional parity bonds or other additional parity obligations, and there is no deficiency in the Bond Fund or Reserve Fund.

(2) The principal of and interest on the Additional Bonds shall be payable from the Bond Fund and further secured by the Reserve Fund, the Reserve Requirement for which shall be increased in proportion to the principal amount of the Additional Bonds being issued.

(3) Prior to the delivery of any Additional Bonds, the City shall have on file at the office of the City Clerk a certificate of a licensed professional engineer, who may be the City Engineer, or a certificate of an independent certified public accountant, dated prior to the authorization of such Additional Bonds, showing that the Estimated Net Revenues, determined and adjusted as hereafter provided, for each fiscal year after the issuance of such Additional Bonds, will equal at least 1.20 times the amount required for the payment of the average annual principal of and interest on the Bond, the Series 1999 Bonds, and any Additional Bonds then outstanding, plus the Additional Bonds proposed to be issued.

(4) In determining Estimated Net Revenues, the Net Revenues for the past twelve (12) consecutive months immediately preceding the year of the proposed Additional Bonds shall be adjusted by such engineer or accountant to take into consideration changes in Net Revenues estimated to occur under one or more of the following conditions for each

year after delivery of the Additional Bonds for so long as the Bond, the Series 1999 Bonds, and any Additional Bonds, including the Additional Bonds to be issued, shall be outstanding:

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

(5) The foregoing limitations, or any of them, may be waived or modified by the written consent of the Registered Owner of the Bond.

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

B. Parity Bonds to Complete Project. In the event grant funds, plus the proceeds of the Bond provided for in this Ordinance, are insufficient to complete the Project, then parity bonds may be issued to complete the Project, and the restrictions set forth in this Section pertaining to the issuance of parity bonds shall not apply.

C. Subordinate Lien Bonds. No provision of this Ordinance or of any instrument pertaining thereto shall be deemed to limit or restrict the power of the City to issue bonds, notes or warrants, or to make pledges of the revenues which shall be subordinate as to the lien of the Bond and which shall provide for compliance with the current provisions hereof prior to the application of any funds to said subordinate purpose.

D. Refunding. The restrictions with respect to the issuance of parity obligations shall not apply if such additional parity bonds proposed to be issued are for the sole purpose of refunding outstanding water revenue bonds.

Section 16: INVESTMENTS

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

Section 17: GENERAL COVENANTS

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

A. Maintain Corporate Status. The City will maintain its identity as a municipal corporation and will make no attempt to cause its corporate status to be abolished.

B. Budget Laws. The City will comply with applicable state budget laws in preparing its annual budget and in keeping accounts and records.

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

D. Operate System. It will operate the System in an efficient and economical manner and prescribe, revise, and collect such charges in connection therewith so that the services, facilities, and properties of the System may be furnished at the lowest possible cost consistent with sound economy and prudent management.

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

F. Preserve Security. It will preserve and protect the security of the Bond and the rights of the Registered Owner thereof.

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

H. Service Bond. It will pay and cause to be paid punctually the principal of the Bond and the interest thereon on

the date or dates and at the place or places and in the manner mentioned in the Bond, and in accordance with this Ordinance.

I. Pay Claims. It will pay and discharge any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the Revenue of the System, or any part of said Revenue of the System, or any funds in the hands of the Treasurer, prior or superior to the lien of the Bond or which might impair the security of the Bond, to the end that the priority and security of the Bond shall be fully preserved and protected.

J. Encumbrances. It will not mortgage or otherwise encumber, sell, lease, or dispose of the System or any part thereof, nor enter into any lease or agreement which would impair or impede the operation of the System or any part thereof necessary to secure adequate revenues for the payment of the principal of and interest on the Bond, nor which would otherwise impair or impede the rights of the Registered Owner of the Bond with respect to such revenues of the operation of the System without provisions for the retirement of the Bond then outstanding from the proceeds thereof.

K. Insurance. It will procure and keep in force insurance upon all buildings and structures of the System and the machinery and equipment therein, which are usually insured by entities operating like property, in good and responsible insurance companies. The amount of the insurance shall be not less than the full replacement cost thereof and shall be such as may be required to adequately protect it and the Registered Owner of the Bond from loss due to any casualty, and in the event of any such loss, the proceeds shall be used to repair or restore the System or for the payment of the Bond issued under this Ordinance.

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

M. Engineers. It will employ consulting engineers of acknowledged reputation, skill, and experience in the improvement and operation of the System for any unusual or extraordinary items of maintenance, repair, or betterments as shall be required from time to time, all reports, estimates, and recommendations of such consulting engineers to be filed with the Clerk and furnished to the Registered Owner of the Bond issued hereunder, upon request.

N. Accounts. It will establish and maintain proper methods of accounting and bookkeeping, keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System, and furnish

complete operating and income statements to the Registered Owner upon request.

O. Delinquencies. It will not furnish water service to any customer whatsoever free of charge, and it shall not later than sixty (60) days after the end of each calendar year, take such legal action as may be reasonable to enforce collection of all collectible delinquent accounts.

Section 18: SPECIAL COVENANTS

The City further covenants and agrees:

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

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

C. None of the proceeds of the Bond will be used directly or indirectly (i) to make or finance loans to persons or (ii) in any trade or business carried on by any person (other than use as a member of the general public). For purposes of the preceding sentence, the term "person" does not include a government unit other than the United States or any agency or instrumentality thereof, and the term "trade or business" means any activity carried on by a person other than a natural person. The City further covenants and agrees to take no action which would cause the Bond to be a "private activity bond," nor will it omit to take any action necessary to prevent the Bond from becoming a "private activity bond," within the meaning of Section 141 of the Code.

D. The City has general taxing powers. The Bond is not a "private activity bond" within the meaning of Section 141 of the Code. 95% or more of the net proceeds of the Bond are to be used for the local governmental activities of the City. The City has no subordinate entities. The City has not issued, and does not reasonably anticipate that it will issue, tax-exempt obligations in the calendar year 2003 in a face amount which exceeds \$5,000,000. Accordingly, under Section 148(f)(4)(C) of the Code,

the City is not required to pay rebates to the United States under Section 148(f) of the Code.

E. The Mayor, Clerk, and Treasurer, and other appropriate officials of the City, or any one or more of such officials, as may be appropriate, are each hereby authorized and directed to execute, on behalf of the City, such certificate or certificates as shall be necessary to establish that the Bond is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated thereunder, and to establish that interest on the Bond is not and will not become includable in the gross income of the owners of the Bond under the Code and applicable regulations. The City covenants and agrees that no use will be made of the proceeds of the Bond, or any funds of the City which may, pursuant to Section 148 of the Code and applicable regulations, be deemed to be proceeds of the Bond, which would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The City further covenants to comply throughout the term of the Bond with the requirements of Section 148 of the Code and the regulations promulgated thereunder in order to prevent the Bond from becoming an "arbitrage bond."

F. The City will comply with the information reporting requirements of Section 149(e) of the Code.

G. None of the proceeds of the Bond will be used to reimburse the City for capital expenditures made prior to the date of delivery of the Bond unless the City, not later than 60 days after the payment of such expenditure, shall have adopted an official intent resolution as provided by Section 1.150-2 of the Treasury Regulations.

Section 19: AMENDMENTS

A. The City from time to time and at any time may adopt an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes:

(1) To add to the covenants and agreements of the City in this Ordinance, other covenants and agreements thereafter to be observed, which shall not adversely affect the interest of the Registered Owner of the Bond, or to surrender any right or power herein reserved.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting, or supplementing any defective provisions contained in this Ordinance, or any ordinance authorizing future bonds in regard to matters or questions arising under such ordinances as the Council may deem necessary or desirable and not inconsistent with such

ordinances and which shall not adversely affect, in any material respect, the interest of the Registered Owner of the Bond.

Any such supplemental ordinance may be adopted without the consent of the Registered Owner of the Bond at any time outstanding, notwithstanding any of the provisions of subsection B of this Section.

B. With the consent of the Registered Owner of not less than 75% in aggregate principal amount of the Bond at the time outstanding, the Council may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) Extend the fixed maturity of the Bond, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, if applicable, without the consent of the Registered Owner of the Bond so affected; or

(2) Reduce the aforesaid percentage of the Registered Owner required to approve any such supplemental ordinance, without the consent of the Registered Owner of the Bond then outstanding.

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

C. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations of the City under this Ordinance and the Registered Owner of the Bond outstanding hereunder shall thereafter be determined, exercised, and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

D. Any Bond executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new bonds so modified as to conform, in the opinion of the Council, to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and

delivered without cost to the Registered Owner of any affected Bond then outstanding, upon surrender for cancellation of such Bond.

Section 20: VALIDITY OF ISSUANCE

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

Section 21: REGISTERED OWNER'S REMEDIES - RECEIVER

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

Section 22: LOAN AGREEMENT

The Loan Agreement between the City, as borrower, and the State of Idaho, Division of Environmental Quality, as lender, executed by the City on May 16, 2000, a copy of which is annexed hereto as Exhibit "B," is by reference incorporated herein, and made a part of this Ordinance as though set forth in full herein.

Section 23: ORDINANCE A CONTRACT

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

Section 24: DETERMINATION

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

Section 25: SEVERABILITY

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

Section 26: REPEALER

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

Section 27: PUBLICATION

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

DATED this 9th day of April, 2003.

CITY OF PECK
Nez Perce County, Idaho

By

Samuel H. May Jr.
Mayor

ATTEST:

Paula K. Colwell
City Clerk

(S E A L)