ORDINANCE NO. 85

AN ORDINANCE OF THE CITY OF DOVER, OF BONNER COUNTY, IDAHO, AUTHORIZING THE ISSUANCE OF A WATER REVENUE REFUNDING BOND IN THE PRINCIPAL AMOUNT OF $_____ TO REFUND CERTAIN OUTSTANDING WATER REVENUE BONDS OF THE CITY; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF SUCH REFUNDING BOND; PROVIDING FOR THE COLLECTION, HANDLING AND DISPOSITION OF REVENUE; SPECIFYING THE DATE, FORM, MATURITY, AND COVENANTS OF SAID BOND; ESTABLISHING AND ADOPTING VARIOUS FUNDS AND ACCOUNTS; PROVIDING FOR THE ISSUANCE OF ADDITIONAL BONDS; APPROVING THE SALE AND DELIVERY OF THE BOND; PROVIDING CERTAIN COVENANTS WITH RESPECT TO FEDERAL TAX LAW; PROVIDING FOR THE EFFECTIVE DATE OF THE ORDINANCE; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

CITY OF DOVER
Bonner County, Idaho

WATER REVENUE REFUNDING BOND, 2006
Principal Amount of $_____

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, OF BONNER COUNTY, IDAHO, as follows:

WHEREAS, the City of Dover, of Bonner County, Idaho (the "City"), is a duly incorporated and existing municipal corporation, organized and existing under and by virtue of the laws of the State of Idaho;

WHEREAS, the City has previously issued bonds to make improvements and betterments to its water system and facilities, and currently has two (2) separate bond issues outstanding which are payable from the revenue of the water system of the City, entitled:

(1) City of Dover Water Revenue Bond, Series 1991, issued on September 23, 1991; and

(2) City of Dover Parity Lien Water Revenue Bond, Series 1995, issued on October 31, 1995;

(herein referred to as the "Outstanding Bonds"), which Outstanding Bonds the City wishes to redeem and retire prior to their scheduled dates of maturity;

WHEREAS, the City Council of the City has determined that it is necessary to modify the covenants related to the Outstanding Bonds and it is therefore in the best interests of the City to refund the Outstanding Bonds;

WHEREAS, for the purpose of redeeming and retiring the Outstanding Bonds, the City has determined to issue and sell a Water Revenue Refunding Bond, 2006 (herein the "Refunding Bond") in the principal amount of $_____, or so much thereof as is necessary to fully redeem and retire the Outstanding Bonds;

WHEREAS, Panhandle State Bank, of Sandpoint, Idaho, has agreed to purchase said Bond from the City in the principal amount of $_____; and

WHEREAS, Idaho Code authorizes the City to sell its bonds at private sale, without giving notice thereof and in such manner as the City may determine;

NOW THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERED as follows:

Section 1: DEFINITIONS

As used in this Ordinance, the terms herein have the meanings provided in this Section. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words imparting the singular number shall include the plural numbers and vice-versa unless the context shall otherwise indicate.

Additional Bonds shall mean any Water Revenue Bond of the City hereafter issued, from time to time, having a lien upon the Net Revenue for the payment of the principal thereof and interest thereon, equal to the lien of the Bond authorized herein.

Annual Debt Service shall mean the amount required in a calendar year for the payment of the principal of and interest on the Bond and any Additional Bonds, except interest to be paid from the proceeds of such Additional Bonds.

Bond or **Bonds** shall mean the herein authorized "City of Dover Water Revenue Refunding Bond, 2006" in the principal amount of not more than $_____.

Bond Fund shall mean the "City of Dover Water Revenue Bond Fund" heretofore created and pledged herein for the purpose of paying the principal and interest due on the Bond and any Additional Bonds.

Bond Ordinance or **Ordinance** shall mean this Ordinance authorizing the issuance of the Bond.

Bond Register shall mean the registration records of the City, maintained by the Bond Registrar, on which shall appear the name, address and tax identification number of the Registered Owner of the Bond.

Bond Registrar shall mean the Treasurer of the City, or his/her successor in function, if any, as set forth in this Ordinance.

City shall mean the City of Dover, of Bonner County, Idaho, or the City Council of the City, as the same is regularly constituted from time to time.

City Clerk or **Clerk** shall mean the *de facto* or *de jure* City 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 function, if any.

Code shall mean the Internal Revenue Code of 1986, as amended, and any Treasury Regulations promulgated thereunder.

Council shall mean the City Council of the City of Dover, of Bonner County, Idaho, as the same is regularly constituted from time to time.

Debt Service Account shall mean the "City of Dover Debt Service Account" within the Bond Fund described in this Ordinance, to be used to pay the principal of and interest on the Bond and any Additional Bonds as the same shall become due and payable.

Maximum Annual Debt Service shall mean an amount equal to the greatest Annual Average Debt Service with respect to the Bond and any Additional Bonds for the current or any future calendar year.

Mayor shall mean the *de facto* or *de jure* Mayor of the City, or any presiding officer or titular head of the City or his/her successor in functions, if any.

Net Proceeds when used with reference to the Bond, shall mean the face amount of the Bond, plus accrued interest and original issue premium, if any, and less original issue discount and proceeds deposited into the Reserve Account, if any.

Net Revenue shall mean the Revenue of the System after the deduction of Operation and Maintenance Expenses.

Operation and Maintenance Expense or **Costs of Maintenance and Operation** or any phrase of similar import, shall mean 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 Revenue of the System 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 bond and property and liability insurance premiums appertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining thereto;

(3) Payments to pension, retirement, health, and hospitalization funds and other insurance related to the operation of the System;

(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 fiscal or paying agent, Bond Registrar, commercial bank, trust bank or other depository bank appertaining to the Bond or appertaining to the Project, if any;

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

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

Outstanding, when used with reference to a bond or bond, as of any particular date, shall mean all bond which have been issued, executed, authenticated and delivered by the City, except (i) bond canceled because of payment or redemption prior to their stated date of maturity, and (ii) any bond (or portion thereof) for the payment or redemption of which there has been separately set aside and held for the payment thereof.

Outstanding Bonds shall mean the Outstanding water revenue bonds of the City:

(1) City of Dover Water Revenue Bond, Series 1991, issued on September 23, 1991; and

(2) City of Dover Parity Lien Water Revenue Bond, Series 1995, issued on October 31, 1995.

Refunding Account shall be the account by that name created within the Bond Fund into which will be deposited the funds necessary to refund the Outstanding Bonds.

Registered Owner or **Owner** shall mean Panhandle State Bank, of Sandpoint, Idaho, its successors or assigns, as the owner of the Bond.

Reserve Account shall mean the "City of Dover Debt Service Reserve Account" within the Bond Fund, heretofore created for the purpose of securing the payment of principal of, redemption price, if any, and interest on the Bond and any Additional Bonds.

Reserve Account Requirement shall mean an amount equal to the lesser of the Maximum Annual Debt Service or 110% of the Average Annual Debt Service on the Bond and any Additional Bonds, or 10% of the Net Proceeds of the Bond.

Revenue Fund shall mean the "City of Dover Water Revenue Fund" previously created by the City and referred to in this Ordinance, into which all of the Revenue of the System is pledged to be deposited.

Revenue of the System shall mean all earnings, revenue and moneys received by the City from or on account of the operation of the System, including the income from investments of the money in the Revenue Fund and the Bond Fund or from any other investment thereof, except the income from investments irrevocably pledged to the payment of any other Water Revenue Bond pursuant to a plan of retirement or refunding. The words "Revenue of the System" also shall include any federal or state reimbursements of operating expenses to the extent such expenses are included as Operation and Maintenance Expenses of the System. Revenue of the System does not include proceeds of taxes levied and collected by the City.

System shall mean the water system of the City, as they now exist, including the assets, real and personal, tangible and intangible, and as they may later be added to, extended and improved, and shall include buildings, structures, utilities or other income producing property from the operation of or in connection with which revenues for the payment of the Bond to be issued hereunder will be derived, and the lands appertaining thereto, including, without limitation, any Improvement to be acquired with the proceeds of the Bond.

Treasurer shall mean the Treasurer of the City of Dover, or his/her successor in functions, if any.

Section 2: FINDINGS AND DETERMINATIONS

The City hereby finds and determines that it is in the best interests of the ratepayers of the City to redeem and retire the City's Outstanding Bonds pursuant to the terms and conditions set forth in the Ordinance authorizing its issuance. The defeasance of the Outstanding Bonds should occur simultaneously with, or immediately after, the issuance of the Bond by the deposit of the necessary funds into the Refunding Account. The proper officials of the City are hereby authorized and directed to take all necessary and appropriate action to refund, redeem and retire the Outstanding Bonds on or immediately after the date of issuance of the Bond.

Section 3: DESCRIPTION OF THE REFUNDING

A. Refunding Description. This Bond, in the principal amount of $_____, shall be issued for the purpose of providing a portion of the funds necessary to refund the City's Outstanding Bonds, thereby effecting a savings to the City and its residents and modifying and/or removing covenants now applicable to the System that the Council believes should be eliminated.

B. Costs. The proceeds of the Bond will be used to refund the Outstanding Bonds of the City on March 1, 2006, in an estimated principal amount of $_____, plus accrued interest and other costs of refunding.

Section 4: THE BOND

A bond designated "City of Dover Water Revenue Refunding Bond, 2006" (the "Refunding Bond"), in the principal amount of $_____, is hereby authorized to be issued, sold, and delivered. Said Bond shall be dated as of the date of its delivery and shall bear interest on the unpaid balance at the rate of _____% per annum from the date of the Bond until paid. Interest on the Bond shall be calculated on the basis of a _____-day year. Installments of principal and interest on the Bond shall be paid in accordance with instructions from the Registered Owner of the Bond. The Bond shall be substantially in the form as set forth in Exhibit "A" attached hereto and by reference made a part hereof.

The sale of the Bond to the Panhandle State Bank is hereby authorized and approved. The Registered Owner has requested, and the City has agreed, that the Bond shall be represented in the form of a single, registered, non-transferable bond without coupons.

The City hereby agrees to comply with all requirements of the Registered Owner as contained in the _____, 2006 offer to purchase the Bond.

Section 5: EXECUTION OF BOND

Without unreasonable delay, the City shall cause a definitive Bond to be prepared, executed and delivered, which Bond shall be printed with lithographed or steel engraved borders. The Bond shall be executed in the name of the City by the Mayor, by his manual signature thereon, by the City Treasurer, by her manual signature, shall be attested by the City Clerk, by her manual signature, and shall be authenticated by the seal of the City affixed thereto. The Bond shall then be delivered to the Bond Registrar for authentication and delivery.

Section 6: PLACE AND MANNER OF PAYMENT

Both principal of and interest on the Bond shall be payable in lawful money of the United States of America to the Registered Owner thereof, whose name appears on the Bond Register maintained by the Bond Registrar at the close of business on the fifteenth day of the calendar month prior to a payment date, and shall be paid by check or draft of the Registrar mailed on the due date to such Registered Owner at his address as it appears on such Bond Register or at such

other address as may be furnished in writing by such Registered Owner to the Bond Registrar. At the option of the Registered Owner, such payments may be made by wire transfer.

Section 7: BOND REGISTRAR

The Treasurer of the City is hereby appointed as Bond Registrar and authenticating and paying agent, and is herein referred to as the "Bond Registrar." The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration of the Bond. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond in accordance with the provisions of each Bond and this Ordinance, and to carry out all of the Bond Registrar's powers and duties under this Ordinance.

The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bond.

The Bond may not be transferred without first (a) taking all necessary action to qualify the Bond for offer and sale under the securities or "blue sky" laws of the United States of America or such state, or obtaining the advice of counsel that no such action is necessary because of a registration exemption; (b) complying with the condition of transfer set forth in the Bond; and (c) providing to the purchaser thereof, or any participant therein, all material information in its possession necessary to evaluate the risks and merits of the investment represented by the purchase of or participation in the Bond

Section 8: REDEMPTION PRIOR TO MATURITY

A. Optional Redemption. The City hereby reserves the right, at its option, to redeem the principal amount of Bond Outstanding, in whole, or, in the manner hereinafter provided, in part, at any time if there is sufficient money in the Bond Fund over and above the amounts necessary to pay currently maturing installments of principal and interest.

Redemption shall be made in the amount of or in multiples of $1_____. No partial redemption shall extend or postpone the due date of any subsequent installment. Any redemption shall be made without penalty, additional interest, or charges.

B. Notice of Redemption. Notice of any such intended redemption shall be mailed by first-class mail to the Registered Owner of the Bond at the address appearing on the Bond Register, or, at such other address as designated in writing to the Bond Registrar by the Registered Owner, not less than thirty (30) nor more than sixty (60) days prior to the redemption date.

C. Effect of Redemption. When so called for redemption, the Bond or Bond shall cease to accrue interest on the specified redemption date, provided funds for redemption are on deposit at the place of payment at that time, and shall not be deemed to be Outstanding as of such redemption date.

Section 9: RATES AND CHARGES

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

Section 10: PLEDGE OF REVENUES

All of the Net Revenue of the System is hereby pledged for the payment of the Bond, as a prior first charge and lien thereon, equal to the charge and lien of any Additional Bonds. Revenue of the System shall be used and applied in the order of priority provided in this Ordinance.

Section 11: THE REVENUE FUND

There has heretofore been created a fund known as the "City of Dover Water Revenue Fund" (the "Revenue Fund"), into which all of the Revenue of the System shall be deposited forthwith upon receipt.

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

(1) First, to pay the Costs of Operation and Maintenance of the System.

(2) Second, to pay the interest on the Bond and any Additional Bonds;

(3) Third, to pay the principal of the Bond and any Additional Bonds;

(4) Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of the Bond and any Additional Bonds;

(5) Fifth, to make all payments into the Replacement Fund once an amount equal to the Reserve Account Requirement is established in the Reserve Account;

(6) Sixth, to make all payments required to be made into a bond fund hereafter created to pay and secure the payment of the principal of and interest on any bond which have a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Bond; and

(7) Seventh, to retire by redemption or purchase in the open market any Outstanding revenue bond or revenue warrants of the City payable out of the Revenue of the System, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes, including, but not limited to payments of municipal taxes or payments to the City in lieu of taxes.

B. Surplus Funds: Funds remaining in the Revenue Fund after having been applied or designated funds for the purposes provided in this Section, shall constitute surplus funds and may be invested in securities as permitted by law.

Section 12: THE BOND FUND

There has heretofore been created, and shall be maintained by the Treasurer, a fund designated "City of Dover Water Revenue Bond Fund" (the "Bond Fund"), or other designation conforming to banking requirements or good accounting practices, solely for the purpose of paying the principal of, premium, if any and interest on the Bond and any Additional Bonds. Said Bond Fund shall consist of a Debt Service Account, a Debt Service Reserve Account and a Refunding Account, as hereinafter described.

A. Debt Service Account. A Debt Service Account has been created in the Bond Fund for the purpose of paying the principal of, premium, if any, and interest on the Bond and any Additional Bonds.

As long as the Bond or Additional Bonds remain Outstanding, the City hereby irrevocably obligates and binds itself to set aside and pay from the Revenue of the System into the Debt Service Account, those amounts necessary, together with assessments, if any, and such other funds as are on hand and available in the Debt Service Account, to pay the interest or principal and interest next coming due on the Bond and any Additional Bonds. Such payments shall be made on or before the twentieth day of each month, beginning with the first full calendar month following the date of the Bond, and continuing for as long as any Bond or Additional Bonds is Outstanding, an amount which, with other moneys available therefor in the Debt Service Account, will be equal to at least one-twelfth (1/12) of the principal and interest to become due and payable on the next payment date on the Bond and any Additional Bonds then Outstanding.

B. The Refunding Account. There is hereby authorized to be created an account known as the "Refunding Account", which account is to be drawn upon for the sole purpose of paying the principal of and interest on the Outstanding Bonds and of paying costs related to the refunding of the Outstanding Bonds.

All of the proceeds of the Refunding Bond authorized herein, along with other legally available funds of the City, shall be paid into the Refunding Account. Money in the Refunding Account shall be used immediately upon receipt thereof to defease the Outstanding Bonds and discharge the other obligations of the City relating thereto under this Ordinance by providing for the payment of the principal of and interest thereon on or before the date of the next payment of the Bond. The City hereby irrevocably calls the Outstanding Bonds in accordance with the terms and conditions set forth in the individual Ordinances authorizing the redemption and retirement of the Outstanding Bonds prior to its fixed maturity.

The City Treasurer is hereby authorized and directed to provide for the giving of notice of the redemption of the Outstanding Bonds in accordance with the applicable provisions of the Ordinances authorizing the Outstanding Bonds.

C. **Debt Service Reserve Account.** A Debt Service Reserve Account (the "Reserve Account") has been created in the Bond Fund, to provide additional security for the payment of principal and interest on the Bond and any Additional Bonds. The City will deposit into the Reserve Account an amount equal to the Reserve Account Requirement.

Whenever any moneys are withdrawn from the Reserve Account to pay the principal of or interest on the Bond, or if a deficiency exists in such Account, the amount so withdrawn or the amount of such deficiency shall be restored by monthly transfers from the Revenue Fund on the first day of each calendar month after such withdrawal, in the sum of not less than $100.00, or an amount equal to one-half the net surplus for the prior monthly service collection period, whichever is greater, until there has been restored therein the gross amount provided heretofore in this section.

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

All moneys in the Reserve Account 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. Interest earned on any such investment shall be deposited into the Bond Fund.

Section 13: ISSUANCE OF ADDITIONAL BONDS

Additional Bonds, on a parity basis, may be issued for any legal purposes, upon the following terms and conditions:

A. Limitations 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 pledged Revenues on a parity with, but not prior nor superior to, the lien of the Bond herein authorized; provided, however, that before any such additional parity bond or other additional parity obligations are authorized or actually issued:

(1) The City is not, and has not been, in default a 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 Bonds or other additional parity obligations.

(2) The Revenue of the System for the past twelve (12) consecutive months immediately preceding the year of the issuance of such additional parity obligations shall have been sufficient to pay the Operation and Maintenance Expense for said past twelve (12) consecutive months, and in addition, sufficient so that the Net Revenues for such preceding year equal an amount representing 120% of the average annual principal and interest requirements of the Outstanding Bonds and any other obligation of the City payable from the Revenue of the System plus the average annual principal and interest requirements of the Additional Bonds other obligations proposed to be issued, provided, this limitation may be waived or modified by the written consent of the registered owners or holders of 75% of the principal amount of the Bond and any Additional Bonds;

(3) A written certification by the City engineer or an independent engineer, if requested, or a Certified Public Accountant, that the 120% net revenue requirement of Section (2) above has been satisfied, shall be obtained and filed with the City, which certification 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 additional obligations on a parity with the Bond authorized herein.

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 appertaining thereto shall be deemed to limit or restrict the power of the City to issue bonds or warrants, or to make pledges of the Revenue 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 restriction with respect to the issuance of parity obligations shall not apply if such Additional Bonds proposed to be issued are for the sole purpose of refunding outstanding Water Revenue Bonds.

Section 14: COVENANTS

A. The City shall at all times maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted, and the City will at all times operate or cause to be operated said properties of the System and the business in connection therewith in an efficient manner and at a reasonable cost.

B. The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(1) The Revenue of the System will at all times be sufficient (a) to pay the Costs of Maintenance and Operation, (b) to make any payments required to be made on account of the Bond as and when the same shall become due and payable, (c) to make any payments required to be made on account of all Additional Bonds, as and when the same shall become due and payable, (d) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this Ordinance, and (e) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(2) The Net Revenue in each calendar year commencing January 1, 2006, will equal at least 1.25 times the Maximum Annual Debt Service.

C. The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition provision is made for payment into the Bond Fund of cash or Government Obligations (as defined in I.C. 57-504, as it now reads or is hereafter amended) sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all the Bonds and Additional Bonds, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Revenue Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the net amount of the Bonds and Additional Bonds then Outstanding (defined as the total principal amount the Bonds and Additional Bonds less the amount of cash and investments in the Revenue Bond Fund) that the revenue from the portion of the System sold or disposed of for the preceding year bears to the total Revenue of the System for such period; or

(2) An amount which will be in the same proportion to the net amount of the Bonds and Additional Bonds then Outstanding (as defined above) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue for such period; or

(3) An amount which will be in the same proportion to the net amount of the Bonds and Additional Bonds then Outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties and facilities of the System (to the extent required above) shall be paid into the Reserve Account.

Notwithstanding any other provision of this paragraph, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Revenue Bond Fund.

D. The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof prior or superior to the lien thereon for the payment of the Bonds and any Additional Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, prior to or superior to the lien of the Bonds and any Additional Bonds, or which might impair the security of the Bonds and any Additional Bonds.

E. The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by private corporations operating like properties, or will implement a self insurance program with reserves adequate, in the judgment of the City Council, to protect the City and the Registered Owner of the Bond against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall at the option of the City be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of the Bond or Additional Bonds, or for deposit into the Reserve Account.

F. The City shall keep proper books of account which shall be kept in accordance with any applicable rules, regulations and statutes prescribed by the State of Idaho. The City shall prepare, and any Registered Owner of the Bond may obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each fiscal year, and the income and expenses of such year, including the amounts paid into the Revenue Fund, the Revenue Bond Fund, and into any and all special funds or accounts created pursuant to the provisions of this Ordinance, and the amounts expended for maintenance, renewals, replacements and capital additions to the System.

G. The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as any Bonds and Additional Bonds are Outstanding and unpaid.

H. The City will not expend any of the revenue derived from the operation of the System or the proceeds of any indebtedness payable from Revenue of the System for any

extensions, betterments and improvements to the System which are not legally required or economically sound, and which will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.

I. The City shall comply with the provisions of this section unless, in the written opinion of Bond Counsel to the City, such compliance is not required in order to maintain the exemption of the interest on the Bonds from federal income taxation.

Section 15: 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.

Section 16: 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 interests of the Registered Owners of the Outstanding Bonds, 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 provision contained in this Ordinance, or any Ordinance authorizing future bond in regard to matters or questions arising under such Ordinances as the City 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 Outstanding Bonds.

Any such supplemental Ordinance may be adopted without the consent of the Registered Owner of the Bonds at any time Outstanding, notwithstanding any of the provisions of subsection B of this Section.

B. With the consent of the Registered Owners of not less than sixty-six and two-thirds percent (66.67%) in aggregate principal amount of the Bond at the time outstanding, the City may adopt a 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 extend the fixed maturity of the Bond, or reduce the rate of interest thereon, or extend the time of payment of interest from its 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 each Bond so affected.

It shall not be necessary for the consent of the Registered Owner of the Bond 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. Bonds 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 bond so modified as to conform in the opinion of the City, to any modification of this Ordinance contained in any such supplemental Ordinance, may be prepared and delivered without cost to the Registered Owner of the affected Bonds then Outstanding, upon surrender for cancellation of such Bond in equal aggregate principal amounts.

Section 17: TAX COVENANTS; SPECIAL DESIGNATION

A. Tax Covenants: The City hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of such Bond pursuant to Section 148 of the Code which will cause the Bond to be an "arbitrage bond."

B. Special Designation: The Bond is hereby designated as a "Qualified Tax-Exempt Obligation" for purposes of Section 265(b) of the Code for banks, thrift institutions and other financial institutions.

Section 18: ONGOING DISCLOSURE

The City is exempt from Ongoing Disclosure requirements inasmuch as the City's Bond is being sold to a sophisticated purchaser prepared to execute a Certificate of Investigation by Purchaser at Private Sale, in the form of single bond, and the total principal amount is less than $1 million.

Section 19: EVENTS OF DEFAULT

Each of the following events is hereby declared to be an "event of default."

A. Non-payment of Principal or Interest. Payment of the principal of or interest on these Bonds or any Additional Bonds, or any required Reserve Account deposit, is not made when the same becomes due and payable or within thirty (30) days thereafter.

B. Incapable to Perform. The City for any reason is, or is rendered to be, incapable of fulfilling its obligations hereunder.

C. Non-performance of Duties. The City shall have failed to carry out and to perform all acts and things lawfully required to be carried out or to be performed by it under any contract relating to the Revenues, to the System, or to all or any combination thereof, or otherwise, including, without limitation, this instrument, and such failure shall continue for sixty (60) days after receipt of notice from the Registered Owners of at least a majority in principal amount of the these Bonds or Additional Bonds then outstanding.

D. Failure to Reconstruct. The City discontinues or unreasonably delays or fails to carry out with reasonable dispatch the reconstruction of any revenue-producing part of the System which is destroyed or damaged and is not promptly repaired or replaced (whether such failure to repair and the same is due to impracticability of such repair or replacement, or is due to a lack of monies therefore, or for other reasons).

E. Appointment of Receiver. An order or decree is entered by a court of competent jurisdiction, with the consent or acquiescence of the City appointing a receiver or receivers for the System or for the Revenue of the System and any other monies subject to the lien to secure the payment of these Bonds and Additional Bonds, or both such System and such monies, or if any order or decree having been entered without the consent or acquiescence of the City, is not vacated or discharged or stayed on appeal within sixty (60) days after entry.

F. Default of any Provisions. The City makes any default in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions contained in the Bonds authorized or referred to in this Ordinance on its part to be performed, and if such default continues for sixty (60) days after written notice specifying such default and requiring the same to be remedied, is given to the City by the Registered Owner of at least a majority in principal amount of the Bonds or Additional Bonds then Outstanding.

Section 20: APPLICATION OF FUNDS AND MONEYS IN EVENT OF DEFAULT

The City covenants that if an Event of Default shall happen and shall not have been remedied, the City, upon demand of the Registered Owners of at least a majority of the principal amount of the Bonds and Additional Bonds then Outstanding, shall pay over or cause to be paid over to a Trustee for the Registered Owners (i) forthwith, all moneys, securities and funds then held by the City in any fund under the Bond Resolution, and (ii) all Pledged Revenues as promptly as practicable after receipt thereof. The Trustee shall be selected by a majority of the Registered Owners of the Bonds and Additional Bonds then Outstanding.

During the continuance of an Event of Default, the Trustee shall apply all moneys, securities, funds and Pledged Revenues received by the Trustee pursuant to any right given or action taken under the provisions of the Bond Ordinance as follows and in the following order:

A. Compensation and Expenses of Trustee. To the payment of the reasonable and proper compensation, charges, expenses and liabilities of the Trustee;

B. Operating Costs. To the payment of the amounts required for reasonable and necessary Operation and Maintenance Expenses as necessary, in the judgment of the Trustee, to prevent deterioration of the System or loss of Revenue of the System. For this purpose, the books or records and accounts of the City relating to the System shall at all times be subject to the inspection of the Trustee and its representatives and agents during the continuance of such Event of Default;

C. Principal or Redemption Price and Interest. To the payment of the interest and principal or redemption price then due on the Bonds and Additional Bonds as follows:

(1) Unless the principal of all of the Bonds shall have become or have been declared due and payable:

(a) First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, together with accrued and unpaid interest of the Bonds and Additional Bonds therefore called for redemption, and if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

(b) Second: To the payment of the persons entitled thereto of the unpaid principal or redemption price of the Bonds and Additional Bonds shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient pay in full all the Bonds and Additional Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal or redemption due on such date, to the persons entitled thereto, without any discrimination or preference;

(2) If the principal of all of the Bonds and Additional Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Bonds and Additional Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond or Additional Bonds over any other Bond or Additional Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds or Additional Bonds.

(3) If and whenever all overdue installments of interest on the Bonds or Additional Bonds, together with the reasonably and proper charges, expenses and

liabilities of the Trustee, and all other sums payable by the City under the Bond Ordinance, including the principal and redemption price of and accrued unpaid interest on the Bonds or Additional Bonds shall then be payable by declaration or otherwise, shall either be paid by the Trustee for the account of the City, or provision satisfactory to the Trustee shall be made for such payment, and all Events of Default under the Bond Ordinance shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the City and the Trustee shall be restored, respectively, to their former positions and right under the Bond Ordinance. No such restoration of the City and the Trustee in their former positions and rights shall extend to or affect any subsequent Events of Default under the Bond Ordinance or impair any right consequent thereon.

Section 21: RATIFICATION

All actions (not inconsistent with the provisions of this Ordinance) heretofore taken by the City, and its employees, with respect to the Acquisition, construction and installation of the Improvements, and the issuance, sale and delivery of the Bond, are hereby in all respects ratified, approved, and confirmed.

Section 22: 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 23: REPEALER

All ordinances, resolutions or parts thereof in conflict herewith, to the extent of such conflict, are hereby repealed.

Section 24: EFFECTIVE DATE - PUBLICATION

This Ordinance, or a summary hereof substantially in the form set forth in Exhibit "B" attached hereto, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval and publication.

PASSED under suspension of the rules, at a _____ meeting of the City Council of the City of Dover, this _____ day of _____, 2006.

CITY OF DOVER, Bonner County, Idaho

Paul "Randy" Curless
Mayor

ATTEST:

Ruth Guthrie
City Clerk

(SEAL)

* * * * * * * * * *

I, the undersigned, the City Clerk of City of Dover, of Bonner County, Idaho, hereby certify that the foregoing Ordinance is a full, true, and correct copy of a Ordinance duly adopted at a special meeting of the City Council of the City of Dover, duly and properly held on February 23, 2006, of which meeting all members of said City had due notice and at which a majority thereof were present; and that at said meeting said Ordinance was adopted by the following vote:

AYES, and in favor thereof, Councilmembers: — Jim Janish, Marguerite Burge, Margaret Becker, Louis Collins

NAYS, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

I further certify that I have carefully compared the same with the original Ordinance on file and of record in my office; that said Ordinance is a full, true, and correct copy of the original Ordinance adopted at said meeting; and that said Ordinance has not been amended, modified, or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said City on February 23, 2006.

Ruth L. A. Guthrie
City Clerk

(SEAL)