

SUMMARY OF ORDINANCE NO. 99-2

AN ORDINANCE OF ELLISPORT BAY SEWER DISTRICT, OF BONNER COUNTY, IDAHO, DECLARING THE COST OF ACQUIRING, CONSTRUCTING, AND INSTALLING IMPROVEMENTS TO THE SEWER COLLECTION AND TREATMENT SYSTEM OF THE DISTRICT; AUTHORIZING THE ISSUANCE AND SALE OF A SINGLE LOCAL IMPROVEMENT DISTRICT NO. 1 SERIES "A" BOND IN THE AGGREGATE PRINCIPAL AMOUNT OF \$667,000 TO THE UNITED STATES OF AMERICA; AUTHORIZING THE ISSUANCE AND SALE OF A SINGLE LOCAL IMPROVEMENT DISTRICT NO. 1 SERIES "B" BOND IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$553,667 TO THE STATE OF IDAHO, DIVISION OF ENVIRONMENTAL QUALITY; PROVIDING FOR THE DATE, FORM, MATURITY AND DESIGNATION OF SAID BONDS; FIXING THE RATES OF INTEREST AND MANNER OF REPAYMENT OF SAID BONDS; PROVIDING FOR REGISTRATION AND AUTHENTICATION OF SAID BONDS; APPROVING THE SALE OF SAID BONDS; PROVIDING FOR CERTAIN COVENANTS RELATING TO FEDERAL TAX LAW; PROVIDING FOR THE EFFECTIVE DATE HEREOF; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

Section 1: Provides definitions for terms and phrases used in the Ordinance and the Bonds.

Section 2: Describes the sewer improvement project (the "Project") to be constructed and installed and sets forth the cost of the Project.

Section 3: Authorizes two separate LID No. 1 Bonds of the District. The Series "A" Bond, issued in the principal amount of \$667,000, will be sold to the United States. The Series "B" Bond, in the principal amount of not more than \$553,667, will be sold to the State of Idaho Division of Environmental Quality.

Section 4: Describes both the Series "A" Bond and the Series "B" Bond, and their terms of repayment.

Section 5: Authorizes the sale of the Series "A" Bond to the United States and the Series "B" Bond to IDEQ, in accordance with the respective offers to purchase the Bonds.

Section 6: Describes the method of execution and delivery of the Bonds.

Section 7: Provides the place and manner of payment of the Bonds.

Section 8: Allows the District to prepay and redeem the Bonds prior to their original date of maturity, under certain terms and conditions, upon proper notice.

Section 9: Appoints the District Treasurer as Bond Registrar and describes responsibilities of the Registrar.

Section 10: Provides for the proceeds of the Bonds, together with other funds, to be deposited into the Note Fund to repay principal of and interest on the District's outstanding Notes.

Section 11: Describes the District's Bond Fund and Interest Fund, and provides that the principal of and interest on the Bonds shall be payable out of said Funds.

Section 12: Describes the District's Guarantee Fund, its uses and describes warrants drawn upon such Guarantee Fund.

Section 13: Provides for the replacement of lost, stolen, mutilated or destroyed bonds.

Section 14: Provides for the transfer or exchange of Bonds.

Section 15: Describes various tax covenants of the District as they relate to the Bonds.

Section 16: Declares the validity of the Bonds under Idaho Code 50-1701 through 50-1771, inclusive.

Section 17: Provides that the Ordinance constitutes a contract between the District and the Registered Owners of the Bonds.

Section 18: Finds, determines and declares the Project to be essential to the public interest, welfare and convenience.

Section 19: Provides that if any portion of the Ordinance is found to be contrary to law, the remainder shall be in full force and effect.

Section 20: Repeals any prior resolution or ordinance inconsistent herewith.

Section 21: Provides for publication of the Ordinance or a summary thereof once in the official newspaper of the District. Any contest or proceeding to question the validity or legality of this Ordinance, or of any ordinance, resolution, or proceedings heretofore taken with respect to LID No. 1, or of the Bonds authorized hereby, shall be brought in court by any person for any cause whatsoever after the expiration of thirty (30) days from the publication of this Ordinance, and after such time the validity, legality and regularity of this Ordinance and any ordinance, resolution, or proceedings with respect to LID No. 1, or the Bonds authorized hereby, shall be conclusively presumed.

Section 22: States that the Ordinance shall be full force and effect after its passage and publication.

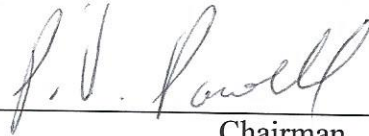
Exhibit "A": Sets forth a form of the Series "A" Bond.

Exhibit "B": Sets forth a form of the Series "B" Bond.

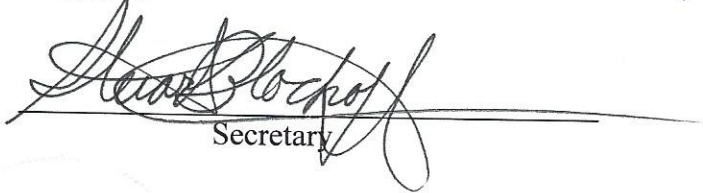
A full text of Ordinance No. 99-2 is available at the office of the Secretary of Ellisport Bay Sewer District and will be provided to any citizen upon personal request during normal business hours.

DATED this 14th day of April, 1999.

ELLISPORT BAY SEWER DISTRICT


Chairman

ATTEST:


Secretary

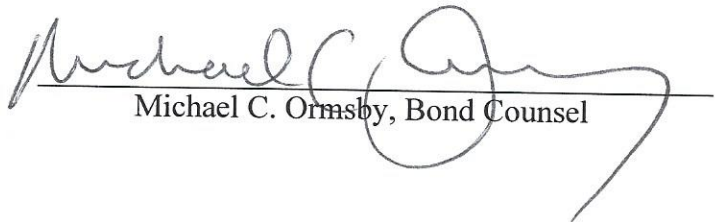
(SEAL)

CERTIFICATION OF BOND COUNSEL

I, the undersigned Bond Counsel for the Ellisport Bay Sewer District, of Bonner County, Idaho, hereby certify that I have read the attached Summary of Ordinance No. 99-2 of said District and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 14th day of April, 1999.

PRESTON GATES & ELLIS LLP


Michael C. Ormsby, Bond Counsel

ORDINANCE NO. 99-2

AN ORDINANCE OF ELLISPORT BAY SEWER DISTRICT, OF BONNER COUNTY, IDAHO, DECLARING THE COST OF ACQUIRING, CONSTRUCTING, AND INSTALLING IMPROVEMENTS TO THE SEWER COLLECTION AND TREATMENT SYSTEM OF THE DISTRICT; AUTHORIZING THE ISSUANCE AND SALE OF A SINGLE LOCAL IMPROVEMENT DISTRICT NO. 1 SERIES "A" BOND IN THE AGGREGATE PRINCIPAL AMOUNT OF \$667,000 TO THE UNITED STATES OF AMERICA; AUTHORIZING THE ISSUANCE AND SALE OF A SINGLE LOCAL IMPROVEMENT DISTRICT NO. 1 SERIES "B" BOND IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$553,667 TO THE STATE OF IDAHO, DIVISION OF ENVIRONMENTAL QUALITY; PROVIDING FOR THE DATE, FORM, MATURITY AND DESIGNATION OF SAID BONDS; FIXING THE RATES OF INTEREST AND MANNER OF REPAYMENT OF SAID BONDS; PROVIDING FOR REGISTRATION AND AUTHENTICATION OF SAID BONDS; APPROVING THE SALE OF SAID BONDS; PROVIDING FOR CERTAIN COVENANTS RELATING TO FEDERAL TAX LAW; PROVIDING FOR THE EFFECTIVE DATE HEREOF; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

**ELLISPORT BAY SEWER DISTRICT
Bonner County, Idaho**

**LOCAL IMPROVEMENT DISTRICT NO. 1 BONDS
Series "A" - Principal Amount of \$667,000
Series "B" - Principal Amount Not To Exceed \$553,667**

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF ELLISPORT BAY SEWER DISTRICT, of Bonner County, Idaho, as follows:

WHEREAS, Ellisport Bay Sewer District (the "District"), of Bonner County, Idaho, is a sewer district operating and existing under and pursuant to the laws of the State of Idaho, and as such is authorized and empowered to create local improvement districts and to construct improvements pursuant to Idaho Code, Title 50, Chapter 17; and

WHEREAS, the District is authorized to conduct proceedings and to form local improvement districts for the purpose of financing the acquisition, construction and installation of improvements to facilities within the local improvement district pursuant to the terms and provisions of Idaho Code Title 50, Chapter 17; and

WHEREAS, the Board of Directors of the District (the "Board") after proper notice duly created its Local Improvement District No. 1 ("LID No. 1") and ordered the acquisition, construction and installation of sewer system improvements by Ordinance No. 91-4, adopted on December 5, 1991; and

WHEREAS, the Board desired to reconfirm the formation of LID No. 1 and by Resolution No. 97-2, provided for another public hearing to be conducted to ratify the formation of LID No. 1, which hearing was conducted on April 22, 1997; and

WHEREAS, after conducting this public hearing, the Board adopted Ordinance No. 91-4, on December 5, 1991, which created LID No. 1 and ordered the acquisition, construction and installation of sewer system improvements, which such formation was confirmed by Ordinance No. 9-1 adopted on April 22, 1997; and

WHEREAS, the District, by the passage of Resolution No. 97-6, adopted on October 28, 1997, authorized the issuance of local improvement district bond anticipation notes in the amount not to exceed \$740,000, in anticipation of the receipt of proceeds of a local improvement district bonds, to temporarily finance a portion of the cost of making such improvements; and

WHEREAS, the total assessment roll within LID No. 1, as confirmed by Ordinance No. 99-1, adopted on January 25, 1999, has been determined to be approximately \$1,462,667.00 and

WHEREAS, the owners of the property within said LID No. 1 have heretofore paid the sum, with interest earned, of approximately \$243,000.00, leaving an unpaid balance of assessments of at most \$1,220,667.00, which amount shall be produced by the issuance and sale of two (2) series of Local Improvement District No. 1 Bonds; and

WHEREAS, litigation has been commenced against the District by a property owner in LID No. 1 relative to the assessment on the property; but since the assessments pledged for the issuance of the Series "A" Bonds are not subject to appeal, it is the intent of the District to issue the remaining Bonds later; and

WHEREAS, the District has received an offer to purchase one of the bonds from the United States of America (the "United States"), and a second offer to purchase one of the bonds from the State of Idaho, Division of Environmental Quality ("IDEQ"), and the District desires to enter into contracts for the sale and purchase of said Bonds; and

WHEREAS, the District and IDEQ have agreed not to issue the Bond to IDEQ at this time; and

WHEREAS, the Board now desires to authorize the issuance of its Local Improvement District No. 1 Bonds, Series "A" and Series "B", issuing the Series "A" Bond at this time and the Series "B" Bond at a later date;

NOW, THEREFORE, BE IT FURTHER ORDAINED as follows:

Section 1: DEFINITIONS

As used in this Ordinance, capitalized terms shall 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, and vice versa. Words imparting the singular number shall include the plural numbers and vice versa, unless the context shall otherwise indicate.

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

Board shall mean the Board of Directors of Ellisport Bay Sewer District, of Bonner County, Idaho.

Bonds shall mean the "Ellisport Bay Sewer District Local Improvement District No. 1 Bonds, Series "A" and Series "B"" herein authorized to be issued, sold, and delivered in the principal amount of \$667,000 for Series "A" and an amount not to exceed \$553,667 for Series "B".

Bond Fund shall mean the "Ellisport Bay Sewer District Local Improvement District No. 1 Bond Fund" created by Section 9 of Ordinance No. 99-1, adopted on January 25, 1995, and referred to in Section 11 of this Ordinance, created for the purpose of paying the principal of the Bonds.

Bond Registrar shall mean the Treasurer of the District, who shall also act as transfer agent, authenticating agent, and paying agent, pursuant to Section 9 of this Ordinance.

Bond Year means each one-year period that ends on the date selected by the District. The first and last Bond Years may be short periods. If no day is selected by the District before the earlier of the final maturity date of the Bonds or the date that is five years after the date of issuance of the Bonds, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bonds.

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

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

Construction Fund shall mean the "Ellisport Bay Sewer District Construction Fund" created by Section 13 of Resolution No. 97-6, adopted on October 28, 1997 and referred to in Section 10 of this Ordinance.

Cost of the Project or Costs of the Project or any phrase of similar import, shall mean all or any part designated by the Board of the costs of the Project, or interest therein, which costs, at the option of the Board, may include all or any part of the incidental costs pertaining to the Acquisition of the Project, including, without limitation:

(1) Preliminary expenses advanced by the District from funds available for the use therefor, or advanced by the federal government, or from any other source, with approval of the Board, or any combination thereof;

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

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

(4) The costs of contingencies;

(5) The costs of any discount on the Bonds and of any of the costs of issuance of the Bonds;

(6) The costs of funding any short-term financing, Notes, or other temporary loans appertaining to the Project, and of the incidental expenses incurred in connection with such loans;

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

(8) All other expenses necessary or desirable and appertaining to the Project, as estimated or otherwise ascertained by the District.

DEQ shall mean the State of Idaho, Division of Environmental Quality, or its successor in functions.

District shall mean Ellisport Bay Sewer District, of Bonner County, Idaho, a duly incorporated and existing municipal corporation organized and operating under the Constitution and laws of the State of Idaho.

Guarantee Fund shall mean the "Ellisport Bay Sewer District Local Improvement Guarantee Fund" created by Section 10 of Ordinance No. 99-1, adopted on January 25, 1999, for the purpose of guaranteeing, to the extent of such fund, the payment of principal of and interest on local improvement district bonds and notes of the District.

Interest Fund shall mean the "Ellisport Bay Sewer District Local Improvement District No. 1 Interest Fund" created by Section 9 of Ordinance No. 99-1, adopted on January 25, 1999, and referred to in Section 11 of this Ordinance for the purpose of paying interest on the Bonds.

Improvement(s) or Improve includes the Acquisition, extension, widening, lengthening, betterment, alteration, reconstruction, or other major improvement, or any combination thereof, of any properties pertaining to the System or an interest therein, but does not mean general maintenance or repair.

Net Proceeds when used with reference to the Bonds shall mean the face amount of the Bonds, plus accrued interest, if any, and original issue premium, if any, and less original issue discount, if any.

Notes shall mean the interest-bearing "Ellisport Bay Sewer District Local Improvement District No. 1 Bond Anticipation Notes, 1997" issued in the aggregate principal amount of not to exceed \$740,000.00, pursuant to, and for the purposes authorized in Resolution No. 97-6.

Ordinance No. 99-2 or Bond Ordinance shall mean this Ordinance, adopted on April 14, 1999, by the Board, authorizing the issuance of the Bonds.

Private Person shall mean any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

Private Person Use shall mean the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property of the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged a *de minimis* fee to cover custodial expenses.

Project shall mean the sewer improvement project described and authorized by Ordinance No. 97-6, adopted on October 28, 1997, and consisting generally of the acquisition, construction and installation of improvements and additions to the Ellisport Bay Sewer District sewer collection and treatment facilities.

Purchaser or Purchasers shall mean, collectively, the United States and DEQ as initial purchasers of the Bond.

Registered Owner or Registered Owners shall mean the purchaser or purchasers of the Bonds and any subsequent transferees or purchasers of the Bonds.

Secretary shall mean the *de facto* or *de jure* Secretary, or other officer of the District who is the custodian of the seal of the District and of the records of the proceedings of the Board, or his/her successor in function, if any.

Series "A" Bond shall mean the Ellisport Bay Local Improvement District No. 1 Bond, Series "A", issued in the principal amount of \$667,000 to the United States.

Series "B" Bond shall mean the Ellisport Bay Local Improvement District No. 1 Bond, Series "B", issued in the principal amount of not to exceed \$553,667 to DEQ.

System shall mean the sewer collection and treatment system and facilities of the District, as it now exists, including the assets, real and personal, tangible and intangible, as it will be added to by the Acquisition of the Project, and as it may later be added to, improved and extended, 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 Bonds 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 Bonds.

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

United States shall mean the United States Department of Agriculture, Rural Utilities Service or Rural Development, or its successor in interests.

Section 2: THE PROJECT

A. **Project Description.** The District shall Acquire certain Improvements to the System, consisting of the following:

(1) The acquisition, construction and installation of approximately 32,500 feet of sewer collection line;

(2) The acquisition, construction and installation of a 1.4 mg aerated lagoon and 20 mg storage lagoon, with related improvements;

(3) The purchase of a land application site, buffer zone and treatment area totaling approximately 60 acres;

together with engineering, legal, accounting, costs of bond issuance, costs of financial advice and other costs incidental thereto. All work will be performed and all materials supplied after the advertisement for bids therefor by giving notice calling for sealed bids for the construction of work.

Said Project is more fully described in the plans and specifications prepared by Ruen-Yeager & Associates, Inc., of Sandpoint, Idaho, on file in the office of the Secretary and hereby incorporated herein by this reference.

B. Cost of the Project. The total Cost of the Project is estimated to be \$4,453,000, of which \$667,000 will be financed by the proceeds of the Series "A" Bond and up to \$553,667 will be financed by the proceeds of the Series "B" Bond, both previously defined and hereinafter authorized to be issued by the Board by this Ordinance. The remainder of the Cost of the Project will be paid with grant funds from the State of Idaho Department of Environmental Quality, prepaid assessments from property owners and other legally available funds, including the issuance of additional bonds, if necessary.

Section 3: BONDS AUTHORIZED

One Local Improvement District No. 1 Bond of the District, in fully registered form, designated "Ellisport Bay Sewer District Local Improvement District No. 1 Bond, Series "A"" in the principal amount of \$667,000, is hereby authorized to be issued, sold, and delivered to the United States.

A second Local Improvement District No. 1 Bond of the District, in fully registered form, designated "Ellisport Bay Sewer District Local Improvement District No. 1 Bond, Series "B"" in the principal amount of not to exceed \$553,667, is also hereby authorized to be issued, sold, and delivered to the State of Idaho, Division of Environmental Quality.

The Bonds are issued in the aggregate principal amount of \$667,000 and not to exceed \$553,667 respectively, which is part of the cost of effecting the improvements, including the contract price and the cost and expenses of engineering, legal and all other costs incidental to said improvements, including the costs of issuance of the Bonds, publications, and interim financing, less the prepayment of assessments.

Section 4: DESCRIPTION OF BONDS

A. Series "A" Bond

The Series "A" Bond shall be issued in fully registered form, shall be dated as of the date of delivery, shall be in the total aggregate principal amount of \$667,000, and shall bear interest on the unpaid balance from the date of the Bond until paid at the rate of 4.75% per annum. Interest shall be calculated on the basis of a 365-day year.

Said Bond shall be payable in equal annual installments of principal and interest, with the first amortized installment of principal and interest on the Bond, in the amount of \$42,162.00 being due one year from the date of closing of the Series "A" Bond. Annual amortized installments of principal and interest are due thereafter on each annual anniversary date of the Bond to the date of maturity or prior redemption. The final annual installment may be in such greater or lesser amount as is necessary to fully pay both of said Bond, both principal and interest, within thirty (30) years of its date.

So long as the Series "A" Bond is owned by the United States, the District will not defease the Bond. This prohibition on defeasance shall be eliminated if the Series "A" Bond is transferred from or sold by the United States.

The Series "A" Bond referred to herein shall be substantially in the form as set forth in Exhibit "A", attached hereto and hereby made a part hereof.

B. Series "B" Bond

The Series "B" Bond shall be issued in fully registered form, shall be dated as of the date of delivery, shall be in the total aggregate principal amount of not to exceed \$553,667, and shall bear interest on the unpaid balance from the date of the Bond until paid at the rate of 4.50% per annum. Interest shall be calculated on the basis of a 365-day year.

The actual dollar amount of the Series "B" Bond and its payment terms shall be set by subsequent Resolution of the District. The final annual installment may be in such greater or lesser amount as is necessary to fully pay both of said Bond, both principal and interest, within twenty (20) years of its date.

The Series "B" Bond referred to herein shall be substantially in the form as set forth in Exhibit "B", attached hereto and hereby made a part hereof.

Section 5: SALE OF BONDS AUTHORIZED

The sale of the Series "A" Bond to the United States in accordance with its offer to purchase, is hereby accepted, authorized and approved. The United States has requested, and the District has agreed, that the obligation of the District thereunder shall be represented in the form

Redemption shall be made on any payment date, and partial redemption shall be in the amount of \$1,000 or in multiples thereof. 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 registered mail to the Registered Owner of the Bond at its address appearing on the Bond Register or at such other address as designated in writing to the Bond Registrar by the Registered Owner, at least thirty (30) days prior to the redemption date.

If either single Bond referred to herein is converted to fully registered serial bonds, without coupons, the District reserves the right to redeem and call said serial bonds, at par plus accrued interest to the date of redemption in inverse numerical order, at the option of the District, on any interest payment date, subject to written notice of such intended redemption to the Registered Owner in the manner provided by law.

C. Effect of Redemption. When so called for redemption, each Bond or portion thereof 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: BOND REGISTRAR

The Treasurer of the District is hereby appointed as bond registrar, transfer agent, authenticating agent, 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 and transfer of the Bonds. The Bond Registrar is authorized to authenticate and deliver the Bonds in accordance with the provisions of such Bonds 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 Bonds.

The Bonds may be transferred only upon the Bond Register, upon the surrender thereof at the principal office of the Bond Registrar, together with a form of transfer duly executed by the Registered Owner or their attorney duly authorized in writing, substantially in the form set forth in the form of the Bonds referred to in Section 4 hereof. Upon the transfer of the Bonds, there shall be issued in the name of the transferee or transferees a new fully registered Bonds of the same aggregate principal amount, maturity and interest rate as the surrendered Bonds. The new Bonds shall bear the same date as the date of the surrendered Bonds, but shall bear interest from the immediately preceding interest payment date to which interest has been paid or duly provided for.

Section 10: NOTE FUND

There has heretofore been created by Section 11 of Resolution No. 97-6, a fund known as the "Ellisport Bay Sewer District Bond Anticipation Note Fund," herein called the "Note Fund," into which shall be deposited all of the proceeds of the sale of the Bonds, plus all grant funds received from any source and/or funds received from any other legally available source, to be used and applied for the payment of the Cost of the Project, including principal of and interest on the Notes. Any interest earnings on moneys invested from the Note Fund shall be deposited into the Note Fund. Any moneys remaining in the Note Fund after payment of all outstanding interim financing, both principal and interest, shall be transferred to the Construction Fund, also created by Resolution No. 97-6.

When the Project has been completed and all costs related thereto have been paid in full, any balance remaining in the Construction Fund derived from the Bonds will be deposited into the Bond Fund described by Section 11 of this Ordinance.

Section 11: BOND FUND, INTEREST FUND AND PRO RATA PAYMENT

The District Treasurer was authorized and empowered by Ordinance No. 97-6 to receive and collect all assessments levied on property within LID No. 1 to pay the Cost of the Project, the installments thereof, the interest thereon, and the penalties accrued, and to pay and disburse such payments to the person or persons lawfully entitled to receive the same, in accordance with the laws of the State of Idaho and all ordinances and resolutions of the District.

All moneys constituting payment of principal on said unpaid installments of assessments for LID No. 1 are to be deposited into a special fund, designated "Ellisport Bay Sewer District Local Improvement District No. 1 Bond Fund" (the "Bond Fund"), created by Ordinance No. 99-1, adopted on January 25, 1999, and shall be used and applied for the purpose of paying the principal of the Bonds herein authorized and for no other purpose whatsoever, and as security for such payment the Bond Fund is hereby pledged.

All moneys constituting payment of interest on said unpaid installments of assessments for LID No. 1 are to be deposited into a special fund, designated "Ellisport Bay Sewer District Local Improvement District No. 1 Interest Fund" (the "Interest Fund"), also created by Ordinance No. 99-1, and shall be used and applied for the purpose of paying the interest on the Bonds herein authorized and for no other purpose whatsoever, and as security for such payment the Interest Fund is hereby pledged.

Both principal of and interest on the Bonds are payable only out of said Bond Fund and Interest Fund, or out of the Local Improvement Guarantee Fund created in Section 10 of said Ordinance No. 99-1, to the extent of such fund and not otherwise.

Moneys in the Bond Fund and Interest Fund for LID No. 1 shall be deposited in such bank or banks as are designated as depositories of public moneys for the funds of the District

under the depository laws of the State of Idaho for the deposit of public funds or investments as provided by law. Interest received on such funds to be deposited or invested shall be placed to the credit of the fund from which it was earned.

In the event the Bond Fund and Interest Fund should be insufficient to meet accruing payments of principal and interest on both the Series "A" Bond and the Series "B" Bond, the District agrees that the moneys on hand in the Bond Fund and Interest Fund shall be used first to pay the interest due and payable on the Series "A" Bond and the Series "B" Bond in full, or in pro rata shares determined upon the principal amount then outstanding on each series of Bonds, and then, if money is remaining after the payment of the interest owed in full, to pay the principal amount then due and payable on each series of Bonds, or a pro rata share of the principal due and payable, determined upon the principal amount then outstanding on each series of Bonds.

If there are sufficient moneys in the Bond and Interest Funds to make the regularly scheduled payments of principal of and interest on the Series "A" and Series "B" Bonds, the District shall have the ability to determine which Bond and in what amounts, prepayments, if any, shall be applied.

Section 12: GUARANTEE FUND

The District has authorized the creation of a Guarantee Fund by Ordinance No. 99-1, adopted on January 25, 1999. The Purchaser has agreed that no initial or regularly scheduled deposits shall be made into said Guarantee Fund, nor is there any funding requirement of any kind at this time. Whenever there shall be, on any payment date for the Bonds, insufficient funds in the Bond Fund or Interest Fund to make any payment of principal of or interest on the Bonds as the same becomes due, payment therefor shall be made by warrant drawn against the Guarantee Fund in the manner provided by Section 50-1763, Idaho Code. If funds for the payment of such warrant are not available in the Guarantee Fund, such warrant shall be registered as provided in Section 50-1763, Idaho Code, and the District shall cause a special tax to be levied and collected therefor as provided in Section 50-1762, Idaho Code. The Guarantee Fund shall thereafter be maintained in the manner provided by Sections 50-1762 through 1769, Idaho Code.

Section 13: LOST, STOLEN, MUTILATED OR DESTROYED BONDS

In case any Bonds shall be lost, stolen, mutilated or destroyed, the Bond Registrar may authenticate and deliver a new Bonds of like date, denomination, number, tenor and effect to the Registered Owner thereof upon the Registered Owner's paying the expenses and charges of the District in connection therewith and upon his filing with the District evidence satisfactory to the District that such Bonds was actually lost, stolen or destroyed and of this ownership thereof, and upon furnishing the District with indemnity satisfactory to the District.

Section 14: TRANSFER OR EXCHANGE OF BONDS

Either series of Bonds shall be transferable by the Registered Owner thereof in person, or by its attorney duly authorized in writing, upon surrender of the Bonds at the principal office of the Bond Registrar for cancellation and issuance of a new Bond registered in the name of the transferee, in exchange therefor.

A Bond shall be exchangeable for a Bond of any authorized denomination or denominations, upon surrender and cancellation of said Bonds at the office of the Bond Registrar.

Whenever a Bond shall be surrendered for transfer or exchange, the Bond Registrar shall authenticate and deliver to the transferee or exchange, in exchange therefor, a new fully registered Bond of any authorized denomination or denominations, of the same maturity and interest rate, and for the aggregate principal amount of such Bond being surrendered.

The Bond Registrar shall require the payment by the Registered Owner requesting such transfer or exchange of any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. The costs imposed by the Bond Registrar for such transfer or exchange shall be deemed to be a Cost of the Project to be borne by the District.

Section 15: TAX COVENANTS

A. Arbitrage; Special Tax Covenants

The District hereby covenants that it will not make any use of the proceeds of sale of the Bonds or any other funds of the District which may be deemed to be proceeds of such Bonds pursuant to Section 148 of the Code which will cause the Bonds to be "arbitrage bonds" within the meaning of said Section. The District will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Bonds) throughout the term of the Bonds.

The District hereby further covenants that it will comply with the registration requirements of Section 149(a) of the Code so long as any Bond is outstanding.

The District hereby further covenants that it will not take any action or permit any action to be taken that would cause the Bonds to constitute a "private activity bonds" under Section 141 of the Code.

B. Bonds Designated Qualified Tax-Exempt Obligations

The District hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b) of the Code, and the District hereby represents that it does not

reasonably expect to issue tax exempt obligations in an aggregate principal amount in excess of 10,000,000 during the 1999 calendar year.

C. Private Person Use Limitation

The District covenants that so long as the Bonds are outstanding, it will not permit:

(a) More than 10% of the Net Proceeds of the Bonds to be used for any Private Person Use; and

(b) More than 10% of the principal or interest payments on the Bonds in a Bond Year to be (under the terms of this Ordinance or any underlying arrangement) directly or indirectly: (i) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (ii) derived from payments (whether or not made to the District) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The District further covenants that, if:

(c) More than 5% of the Net Proceeds of the Bonds are to be used for any Private Person Use; and

(d) More than 5% of the principal or interest payments on the Bonds in a Bond Year are (under the terms of this Ordinance or any underlying arrangement) directly or indirectly: (i) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (ii) derived from payments (whether or not made to the District) in respect of property, or borrowed money, used or to be used for any Private Person Use

then, (i) any Private Person Use of the System described in subsection (c) hereof or Private Person Use payments described in subsection (d) hereof that is in excess of the 5% limitations described in such subsections (c) or (d) will be for a Private Person Use that is related to the state or local governmental use of the System, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bonds used for the state or local governmental use portion of the System to which the Private Person Use of such portion of the System relates. The District further covenants that it will comply with any limitations on the use of the System by other than state and local governmental users that are necessary, in the opinion of bond counsel, to preserve the tax exemption of the interest on the Bonds.

D. Private Loan Limitation

The District covenants that so long as the Bonds are outstanding, it will not permit Bond proceeds in excess of the lesser of:

- (a) 5% of the Net Proceeds of the Bonds, or
- (b) \$5,000,000

of the proceeds of the Bonds, to be used (directly or indirectly) to make loans (other than loans that enable a borrower to finance a governmental tax or assessment of general application for a specific essential governmental function) to a Private Person.

E. Exemption from Arbitrage Rebate Requirement

The District hereby covenants and represents that it shall not issue more than \$5,000,000 in tax exempt obligations during the 1999 calendar year. Accordingly, the District is not required to comply with the arbitrage rebate rules by virtue of Section 148(f)(4)(C) of the Code.

F. Federal Guaranty Prohibition

The District covenants that so long as the Bonds are outstanding, it will not take any action or permit or suffer any action to be taken if the result thereof would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

G. Tax Covenants - Bond Counsel Opinion

The District shall comply with the provisions of the sections of this Ordinance pertaining to the Code unless in the written opinion of Preston Gates & Ellis LLP or other nationally recognized bond counsel to the District, such compliance is not required to maintain the exemption of the interest on the Bonds from federal income taxation.

Section 16: VALIDITY OF ISSUANCE

The Bonds are issued pursuant to the Local Improvement District Act, being Idaho Code Section 50-1701 through 50-1771, inclusive. This recital is conclusive evidence of the validity of the Bonds and the regularity of their issuance.

Section 17: ORDINANCE A CONTRACT

The provisions of this Ordinance shall constitute a contract between the District and the Registered Owner so long as the Bonds hereby authorized remain unpaid. The District hereby agrees to comply with all requirements of the United States of America as contained in the March 13, 1997 letter entitled Loan Approval Conditions, and in Form FmHA 1942-47, Loan Resolution, to the extent that the requirements therein are not inconsistent with State law.

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Section 18: DETERMINATION

The Board does hereby find, determine, and declare that it is essential to the public interest, welfare, and convenience of the District and the inhabitants thereof to undertake and acquire the Project. Said Project will be paid for in part by the issuance of the Bonds in conformity with the Idaho Code, as set forth herein.

Section 19: SEVERABILITY

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the District shall be declared by any court of competent jurisdiction to be contrary to law, then such covenants 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 the Ordinance or of the Bonds.

Section 20: REPEALER

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

Section 21: PUBLICATION

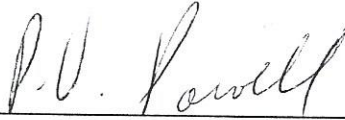
Pursuant to Section 50-1727, Idaho Code, this Ordinance, or a summary thereof in compliance with Section 31-715A, Idaho Code, shall be published once in the official newspaper of the District. Any contest or proceeding to question the validity or legality of this Ordinance, or of any ordinance, resolution, or proceedings heretofore taken with respect to LID No. 1, or of the Bonds authorized hereby, shall be brought in court by any person for any cause whatsoever after the expiration of thirty (30) days from the publication of this Ordinance, and after such time the validity, legality and regularity of this Ordinance and any ordinance, resolution, or proceedings with respect to LID No. 1, or the Bonds authorized hereby, shall be conclusively presumed.

Section 22: EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after its passage, approval and publication as provided herein.

ADOPTED this 14th day of April, 1999.

ELLISPORT BAY SEWER DISTRICT



Chairman, Board of Directors

ATTEST:



Secretary

(SEAL)