

ORDINANCE NO. 91-1

AN ORDINANCE OF THE BAYVIEW WATER AND SEWER DISTRICT, KOOTENAI COUNTY, IDAHO, PROVIDING FOR THE ISSUANCE AND SALE OF AN INTERIM WARRANT, IN ANTICIPATION OF THE ISSUANCE OF ITS LOCAL IMPROVEMENT DISTRICT BONDS AND PREPAYMENT OF ASSESSMENTS FOR LOCAL IMPROVEMENT DISTRICT NO. 1, FOR THE PURPOSE OF TEMPORARILY PAYING THE COSTS OF SAID IMPROVEMENTS; PROVIDING FOR THE MANNER OF ISSUANCE AND THE FORM OF SUCH INTERIM WARRANT; APPROVING THE PROPOSAL OF THE IDAHO FIRST NATIONAL BANK, N.A., TO PURCHASE SAID INTERIM WARRANT; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

BAYVIEW WATER AND SEWER DISTRICT

Kootenai County, Idaho

LOCAL IMPROVEMENT DISTRICT NO. 1

INTERIM WARRANT

PRINCIPAL AMOUNT OF \$660,200

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE BAYVIEW WATER AND SEWER DISTRICT, Kootenai County, Idaho, as follows:

WHEREAS, by Ordinance No. 88-1 on June 8, 1988, the Board of Directors (the "Board") of the Bayview Water and Sewer District (the "District") duly created Local Improvement District No. 1 ("LID No. 1"), ordered the construction of sewer improvements pursuant thereto and authorized the issuance of local improvement district bonds in the estimated amount of \$500,000 to finance a portion of the cost thereof; and

WHEREAS, the District is authorized and empowered by Idaho Code Section 50-1722 to issue interim warrants for the purpose of paying the costs and expenses of local improvement district improvements prior to the sale of bonds and prepayment of assessments; and

WHEREAS, the Board has heretofore, by Ordinance No. 88-1, adopted on June 8, 1988, authorized the issuance of interim warrants for LID No. 1; and

WHEREAS, the Board has heretofore, by Ordinance No. 88-2 adopted on December 14, 1988, issued an interim Warrant for LID

No. 1 in the principal amount of \$302,215 designated Warrant No. 1; and

WHEREAS, the number of lots and parcels within the District has expanded pursuant to written requests for inclusion approved by the Board; and

WHEREAS, although the total project cost has increased, the estimated percentage of the costs to be paid by assessments against the lots and parcels located within the District and the estimated assessment for each lot and parcel located within the District have not changed significantly; and

WHEREAS, in order to provide interim financing for the cost and expense of the improvements to be constructed within the boundaries of LID No. 1, the Board deems it necessary and desirable to issue, sell, and deliver Warrant No. 2, for L.I.D. No. 1 in the principal amount of \$660,200.

NOW THEREFORE, BE IT FURTHER RESOLVED, DETERMINED, AND ORDERED as follows:

Section 1: DEFINITIONS

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

Bonds shall mean the Bayview Water and Sewer District Local Improvement District No. 1 Bonds to be authorized and issued following completion of the Improvements and confirmation of the assessment roll for LID No. 1.

Chairman shall mean the Chairman of the Board of Directors of the Bayview Water and Sewer District or his successor in function, if any.

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

Construction Fund shall mean the Bayview Water and Sewer District Local Improvement District No. 1 Construction Fund created by Section 9 of Ordinance No. 88-2, adopted on December 14, 1988.

Improvements shall mean the improvements to be made within LID No. 1, as described in Section 3 of Ordinance No. 88-1 of the District, adopted on June 8, 1988.

Interim Warrant or Warrant shall mean the interest bearing

Bayview Water and Sewer District Local Improvement District No. 1 Interim Warrant No. 2, in the principal amount of \$660,200, authorized pursuant to Section 2 of this Ordinance.

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

Outstanding, when used with reference to the Warrant, as of any particular date, shall mean any portion of the Warrant which has been issued, executed, authenticated and delivered under this Ordinance, except (i) any portion of the Warrant which was cancelled because of redemption prior to its stated date of maturity, and (ii) the Warrant (or portion thereof) for the payment of which there has been separately set aside and held for the payment thereof.

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 by 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 on a de minimis fee to cover custodial expenses.

Project shall mean the undertaking or undertakings of acquiring and constructing the improvements described in Section 3 of Ordinance No. 88-1 of the District, adopted on June 8, 1988.

Professional Engineer shall mean the engineer selected by the District to do the design work and manage the construction work on the construction of the Improvements.

Reference Rate shall mean the rate quoted to the best commercial customers of West One Bank, Idaho, N.A., Coeur d'Alene, Idaho Branch.

Registered Owner shall mean the West One Bank, Idaho, N.A., Coeur d'Alene, Idaho Branch or its successor or assigns, as initial purchaser of the Warrant.

Registrar shall mean the District Treasurer.

Secretary shall mean the Secretary of the District or his/her successor in function, if any.

Warrant Fund shall mean the Bayview Water and Sewer District Local Improvement District No.1 Warrant Fund created by Section 10 of Ordinance No. 88-2 adopted December 14, 1988.

Warrant Register shall mean the registration records of the District, maintained by the Registrar, on which shall appear the name and address of the Registered Owner of the Warrant.

Warrant Year shall mean the one-year period beginning on the date of issue of the Warrant and ending one year later, and each subsequent one-year period.

Section 2: THE WARRANT

The local improvement district warrant of the District, designated "Bayview Water and Sewer District Local Improvement District No. 1 Interim Warrant No. 2" (herein sometimes referred to as the "Warrant"), is hereby authorized to be issued, sold, and delivered. The Warrant shall be dated as of the date of issuance, shall be in the principal sum of \$660,200, shall mature on July 1, 1992, and shall be issued in fully registered form.

The Warrant shall bear per annum interest from its date at a fully floating rate of seventy percent (70%) of the West One Bank, Idaho, N.A., Reference Rate per annum. Interest shall be payable on June 1, 1991; September 1, 1991; December 1, 1991; March 1, 1992; June 1, 1992; with the final interest payment due at the maturity of the Warrant on July 1, 1992. The final interest installment shall be in such greater or lesser amount as is necessary to fully pay the interest due on the Warrant at maturity. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The Warrant shall be substantially in the form set forth in

Exhibit "A" attached hereto and by reference made a part hereof.

Section 3: EXECUTION OF WARRANT

Without unreasonable delay, the District shall cause the Warrant to be prepared, executed, and delivered. The Warrant shall be signed by the Chairman of the Board of Directors, countersigned by the District Treasurer, and attested by the Secretary (all of which signatures shall be manual), and the seal of the District shall be affixed thereon. The Warrant shall then be delivered to the Registrar for authentication.

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

Only if the Warrant bears thereon a certificate of authentication in the form set forth in Exhibit "A", manually executed by the Registrar, shall it be valid or obligatory for any purpose or entitled to the benefits of this Ordinance, and such certificate of authentication shall be conclusive evidence that the Warrant so authenticated has been duly executed, authenticated, and delivered hereunder and is entitled to the benefits of this Ordinance.

Section 4: PLACE AND MANNER OF PAYMENT

Both principal of and interest on the Warrant shall be payable in lawful money of the United States of America to the Registered Owner thereof, whose name and address shall appear on the registration records (the "Warrant Register") of the District maintained by the Registrar.

Principal of the Warrant is payable solely from prepayment of assessments or the proceeds of the Bonds for LID No. 1, the proceeds of any additional or refunding warrants issued for the purpose of paying the Warrant and any balances in the Construction

Fund, as provided in Section 9 hereof, upon presentation and surrender of the Warrant at the principal office of the Registrar.

Payment of each installment of interest shall be made on its payment date to the Registered Owner whose name appears on the Warrant Register on the fifteenth day of the calendar month next preceding the interest payment date, at the address appearing on the Warrant Register, and shall be paid by check or draft of the Registrar mailed to such Registered Owner on the due date at such address, or such other address as may be furnished in writing by such Registered Owner to the Registrar. Interest is payable from the Warrant Fund.

Section 5: PLEDGE OF BOND PROCEEDS; LIMITATION OF LIABILITY

The District hereby covenants with the Registered Owner of the Warrant that it will issue Bonds in the amount of the confirmed assessment roll for LID No. 1, less the prepayment of assessments as authorized by law, and further pledges the first proceeds of said prepayments of assessments and of the Bonds to payment of the Warrant.

The Warrant shall not constitute an indebtedness of the District within the meaning of any state Constitutional provision or statutory limitation, or a charge against the general credit or taxing power of the District, and except as otherwise permitted in this Ordinance, the Registered Owner of the Warrant shall have no claim against the District, its funds or property.

Section 6: REGISTRAR

The Treasurer of the District, is hereby appointed as registrar, transfer agent, and authenticating and paying agent, and is herein referred to as the "Registrar." The Registrar shall keep, or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Warrant which shall at all times be open to inspection by the District. The Registrar is authorized, on behalf of the District, to authenticate and deliver the Warrant should it be transferred or exchanged in accordance with the provisions of such Warrant and this Ordinance and to carry out all of the Registrar's powers and duties under this Ordinance.

Section 7: TRANSFER OF REGISTERED WARRANT

The Warrant may be transferred only upon the books for the registration and transfer of the Warrant, upon the surrender

thereof at the principal office of the Registrar, together with a form of transfer duly executed by the Registered Owner or his attorney duly authorized in writing, substantially in the form set forth in the form of the Warrant referred to in Section 2 hereof. Upon the transfer of the Warrant, there shall be issued in the name of the transferee or transferees a new fully warrant of the same aggregate principal amount as the surrendered Warrant. The new warrant shall bear the same date as the date of the surrendered Warrant, but shall bear interest from the immediately preceding interest payment date to which interest has been paid or duly provided for.

The Registrar shall not be required to exchange or transfer the Warrant within fifteen (15) days of an interest payment date or, in the case of redemption of the Warrant, within fifteen (15) days of the redemption date.

Section 8: REDEMPTION

The District hereby reserves the right, at its option, to redeem on any interest payment date, the principal amount Outstanding, in whole, or, in the manner hereinafter provided, in part, at any time while the Warrant is held by the Registered Owner or any subsequent transferee, if there is sufficient money in the Warrant Fund over and above the amounts necessary to pay currently maturing installments of principal and interest.

Partial redemption shall be made in the amount of or in multiples of \$1,000.00. No partial redemption shall extend or postpone the due date of any subsequent installment. Any redemption shall be without penalty or additional interest and charges.

Notice of any intended redemption shall be mailed by registered or certified mail to the Registered Owner of the Warrant at the address appearing on the Warrant Register not less than thirty (30) nor more than sixty (60) days prior to the redemption date.

Section 9: CONSTRUCTION FUND

The Treasurer shall maintain the "Bayview Water and Sewer District Local Improvement District No. 1 Construction Fund" (the "Construction Fund"), in the manner provided by Section 9 of Ordinance No. 88-2, adopted on December 14, 1988, and shall deposit into such fund the following moneys:

- (a) All of the proceeds of the sale of the Warrant;

- (b) All prepayments of assessments; and
- (c) All of the proceeds of the sale of the Bonds when they become available.

At least one (1) business day before the due date of any installment of principal and/or interest on the Warrant, the Treasurer shall transfer from the Construction Fund to the Warrant Fund (hereinafter created), an amount equal to such principal and/or interest installment on the Warrant coming due.

All interest earnings on moneys invested from the Construction Fund shall be deposited into said Construction Fund. The District's share of any liquidated damages or other moneys paid by defaulting contractors or their sureties will be deposited into said Construction Fund to assure the completion of the Project.

When the Improvements have been completed and all costs thereof paid in full, or if the Improvements are abandoned, if the Warrant remains Outstanding, any funds remaining in the Construction Fund (or so much thereof as may be needed) shall be transferred to the Warrant Fund and used to pay the principal of and interest on the Outstanding Warrant. When the Improvements have been completed and all costs related thereto, including all principal of and interest on the Warrant, are paid in full, and moneys remaining in the Construction Fund shall be deposited in the Bayview Water and Sewer District Local Improvement District No. 1 Bond Fund, to be created hereafter.

Section 10: WARRANT FUND

The Treasurer shall maintain the "Bayview Water and Sewer District Local Improvement No. 1 Warrant Fund" (the "Warrant Fund"), in the manner provided by Section 10 of Ordinance No. 88-2, adopted on December 14, 1988. Installments of principal and/or interest on the Warrant shall be paid from the Warrant Fund, by transfer of moneys from the Construction Fund, as provided in Section 9 hereof.

Section 11: AMENDMENTS

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

- (1) To add to the covenants and agreements of the

District in this Ordinance, other covenants and agreements thereafter to be observed, which shall not adversely affect the interests of the Registered Owner of the Warrant, 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 warrants in regard to matters or questions arising under such ordinances as the Board 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 Warrant.

Any such supplemental ordinance may be adopted without the consent of the Registered Owner of the Warrant at any time Outstanding, notwithstanding any of the provisions of subsection B of this section.

B. With the consent of the Registered Owner of the Warrant, the Board may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall extend the fixed maturity of the Warrant, or reduce the rate of interest thereon, or extend the time of payment of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof or change the redemption provisions, without the consent of the Registered Owner of the Warrant.

It shall not be necessary for the consent of the Registered Owner of the Warrant 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 District under this Ordinance and the Registered Owner of the Warrant 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. Warrants 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, a new Warrant so modified as to conform in the opinion of the Board, 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 Warrant upon surrender for cancellation of such Warrant, in an equal principal amount.

Section 12: NON-ARBITRAGE

The proceeds of the sale of the Warrant shall not be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause the Warrant to be an "arbitrage bond" within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder and a Certificate stating that the Warrant is not an arbitrage bond within the meaning of said Section 103(c) will be provided to the purchaser at the time of the delivery of the Warrant.

Section 13: WARRANT DESIGNATED QUALIFIED TAX-EXEMPT OBLIGATION

The District hereby designates the Warrant as a "qualified tax-exempt obligation" pursuant to Section 265(b) of the Code. The District does not expect to issue tax-exempt obligations in an aggregate principal amount in excess of \$10,000,000 during the calendar year 1991.

Section 14: SALE OF THE WARRANT

The sale of the Warrant to The West One Bank, Idaho, N.A. in accordance with its offer to purchase dated April 5, 1991 is hereby authorized and approved. The Chairman, Secretary, and Treasurer are hereby authorized and directed to do all things necessary for the prompt execution and delivery of the Warrant and for the proper use and application of the proceeds of the sale thereof.

Section 15: LOST, STOLEN OR DESTROYED WARRANT

In case the Warrant is lost, stolen or destroyed, the Registrar may authenticate and deliver a new warrant of like date, rate of interest, maturity, and tenor 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 Registrar and the District evidence satisfactory to the Registrar and the District that such warrant was actually lost, stolen or destroyed and of his ownership thereof, and upon furnishing the Registrar and the District with indemnity satisfactory to the Registrar and the District.

Section 16: PRIVATE PERSON USE LIMITATION

The District covenants that so long as the Warrant is Outstanding, it will not permit:

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

(b) More than 10% of the principal or interest payments on the Warrant in a Warrant 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 Warrant is to be used for any Private Person Use; and

(d) More than 5% of the principal or interest payments on the Warrant in a Warrant 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 Project 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 Project, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Warrant used for the state or local governmental use portion of the Project relates. The District

further covenants that it will comply with any limitations on the use of the Project 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 Warrant.

Section 17: PRIVATE LOAN LIMITATION

The District covenants that so long as the Warrant is Outstanding, it will not permit Warrant proceeds in excess of the lesser of:

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

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.

Section 18: FEDERAL GUARANTY PROHIBITION

The District covenants that so long as the Warrant is 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 Warrant to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 19: TAX COVENANTS - BOND COUNSEL OPINION

The District shall comply with the provisions of this Ordinance pertaining to the Code unless, in the written opinion of Perkins Coie, or other nationally recognized bond counsel to the District, such compliance is not required in order to maintain the exemption of the interest on the Warrant from federal income taxation.

Section 20: EXEMPTION FROM ARBITRAGE REBATE REQUIREMENTS

The District hereby covenants and represents that it does not reasonably expect to issue more than \$5,000,000 in tax-exempt obligations during the 1991 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.

Section 21: 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 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 Warrant.

DATED this 11th day of April, 1991.

BAYVIEW WATER AND SEWER DISTRICT
Kootenai County, Idaho

By: 
Chairman of the Board
of Directors

ATTEST:

By: 
District Secretary

(S E A L)

* * * * *

I, the undersigned, the Secretary of the Bayview Water and Sewer District, of Kootenai 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 Board of Directors, duly and properly held on April 11, 1991, of which meeting all members of said Board 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, Directors: 4

NAYS, Directors: 0

ABSENT, Directors: 1

ABSTAIN, Directors: 0

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 District on April 11, 1991.

BAYVIEW WATER AND SEWER DISTRICT
Kootenai County, Idaho

By 
District Secretary

(S E A L)