

**COUNCIL MEMBERS:**

SHAWN BARIGAR	DON HALL	SUZANNE HAWKINS	GREGORY LANTING	JIM MUNN, JR.	REBECCA MILLS SOJKA	CHRIS TALKINGTON
<i>Vice Mayor</i>			<i>Mayor</i>			



**AGENDA**  
 Meeting of the Twin Falls City Council  
**September 10, 2012**  
 City Council Chambers  
 305 3<sup>rd</sup> Avenue East -Twin Falls, Idaho

**5:00 P.M.**

PLEDGE OF ALLEGIANCE TO THE FLAG  
 CONFIRMATION OF QUORUM  
 INTRODUCTION OF STAFF  
 CONSIDERATION OF THE AMENDMENTS TO THE AGENDA:  
 PROCLAMATIONS: None

AGENDA ITEMS	Purpose	By:
<b>I. <u>CONSENT CALENDAR:</u></b> 1. Consideration of accounts payable for September 5 – 10, 2012. 2. Consideration of the September 4, 2012, City Council Minutes.	<u>Action</u>	<u>Staff Report</u> Sharon Bryan L. Sanchez
<b>II. <u>ITEMS FOR CONSIDERATION:</u></b> 1. Consideration of a request to adopt Ordinance 3037, an Ordinance authorizing the City to issue a Promissory Note and Loan Agreement with the State of Idaho Bond Bank Authority in an amount not to exceed \$15,335,000, for the construction of sewer infrastructure and the refinancing of water system and sewer system debt. 2. Consideration of a request to award the 2012 Kimberly/Highland Water Extension Project to Sawtooth Construction, Inc., of Ketchum, Idaho, in the amount of \$2,753,757. 3. Consideration of a request to adopt Ordinance 3038, amending City Code Title 9, Chapters 6, 7, and 8 regarding regulations for parking on streets and within public parking lots. 4. Public input and/or items from the City Manager and City Council.	Action  Action  Action	Travis Rothweiler  Lee Glaesemann  Mitch Humble
<b>III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u></b>		
<b>IV. <u>PUBLIC HEARINGS:</u>            6:00 - None</b>		
<b>V. <u>ADJOURNMENT:</u></b>		

*\*Any person(s) needing special accommodations to participate in the above noticed meeting should contact Leila Sanchez at (208) 735-7287 at least two working days before the meeting.*

### Twin Falls City Council-Public Hearing Procedures for Zoning Requests

1. Prior to opening the first Public Hearing of the session, the Mayor shall review the public hearing procedures.
  2. Individuals wishing to testify or speak before the City Council shall wait to be recognized by the Mayor, approach the microphone/podium, state their name and address, then proceed with their comments. Following their statements, they shall write their name and address on the record sheet(s) provided by the City Clerk. The City Clerk shall make an audio recording of the Public Hearing.
  3. The Applicant, or the spokesperson for the Applicant, will make a presentation on the application/request (request). No changes to the request may be made by the applicant after the publication of the Notice of Public Hearing. The presentation should include the following:
    - A complete explanation and description of the request.
    - Why the request is being made.
    - Location of the Property.
    - Impacts on the surrounding properties and efforts to mitigate those impacts.Applicant is limited to 15 minutes, unless a written request for additional time is received, at least 72 hours prior to the hearing, and granted by the Mayor.
  4. A City Staff Report shall summarize the application and history of the request.
    - The City Council may ask questions of staff or the applicant pertaining to the request.
  5. The general public will then be given the opportunity to provide their testimony regarding the request. The Mayor may limit public testimony to no less than two minutes per person.
    - Five or more individuals, having received personal public notice of the application under consideration, may select by written petition, a spokesperson. The written petition must be received at least 72 hours prior to the hearing and must be granted by the mayor. The spokesperson shall be limited to 15 minutes.
    - Written comments, including e-mail, shall be either read into the record or displayed to the public on the overhead projector.
    - Following the Public Testimony, the applicant is permitted five (5) minutes to respond to Public Testimony.
  6. Following the Public Testimony and Applicant's response, the hearing shall continue. The City Council, as recognized by the Mayor, shall be allowed to question the Applicant, Staff or anyone who has testified. The Mayor may again establish time limits.
  7. The Mayor shall close the Public Hearing. The City Council shall deliberate on the request. Deliberations and decisions shall be based upon the information and testimony provided during the Public Hearing. Once the Public Hearing is closed, additional testimony from the staff, applicant or public is not allowed. Legal or procedural questions may be directed to the City Attorney.
- \* Any person not conforming to the above rules may be prohibited from speaking. Persons refusing to comply with such prohibitions may be asked to leave the hearing and, thereafter removed from the room by order of the Mayor.



**Date:** Monday, September 10, 2012  
**To:** Honorable Mayor and City Council  
**From:** Travis Rothweiler, City Manager

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**Request:**

Consideration of a request to adopt Ordinance 3037, an Ordinance authorizing the City to issue a Promissory Note and Loan Agreement with the State of Idaho Bond Bank Authority in an amount not to exceed \$15,335,000 for the construction of sewer infrastructure and the refinancing of water system and sewer system debt.

**Time Estimate:**

Stephanie Bonney of Moore Smith Buxton & Turcke, Chtd, Bond Counsel for the City will provide an overview of the ordinance.

**Background:**

The City currently has two outstanding loans with DEQ. The City borrowed \$6.4 million at 4% for 20 years in 2002 to make improvements to the water system. The City also borrowed approximately \$8.36 million at 4% for 19.5 years in 2002 to make various improvements to the wastewater system.

The direction would be to team up with Boise County to refinance this debt by bonding through the Idaho Bond Bank. The City would benefit from lower interest rates and shared costs of issuance. With the lower anticipated interest rates, it's estimated the City would save approximately \$900,000 over the remaining life of this debt, combined.

The Bond Ordinance authorizes the Idaho Bond Bank Authority to execute loan agreements with the Participants dated as of October 1, 2012. The Loan Agreements and Municipal Bonds for the City of Twin Falls Participant are payable from System Net Revenues from the Water Fund and the Sewer Fund. Total Water System debt that is being refinanced as a part of this issuance is \$2,725,000.

During FY 2011, the Fifth District Court of Idaho reviewed the City's petition to accrue debt in the amount of \$8.0 million to fund needed improvements at the City's wastewater treatment plant and to parts of its collection system. The Court found in favor of the City and granted it the right to enter into a state of indebtedness beyond the confines of a single fiscal year. These improvement will allow the City to meet enhanced effluent quality standards set by the Environmental Protection Agency (EPA) in its new NPDES permit. The projects are the replacement of the ultra-violet disinfection system, the dewatering facility and the influent screen. These projects have been identified as short-term needs in our Facility Plan. All have been in use for years and are reaching the end of their useful life. The UV system was installed in 1996. Technology has advanced well beyond the capability of our system and parts for the system are very expensive. Bulbs and ballasts cost approximately \$100,000 per year. The dewatering facility was installed in the 1980's. The total Sewer Fund system debt from this issuance is \$12,065,000.

**Approval Process:**

Approval of the proposed Ordinance requires a simple majority vote of the City Council members present.

**Budget Impact:**

In the Water Fund, the net amount the City has budgeted for total debt service payments is reduced by \$110,231. The total debt service in the Sewer Fund is expected to increase by \$236,177 annually in FY 2013. This is a result of several factors: adding new debt onto the system that is related to the City's 2011 petition that was judicially confirmed by the Fifth District Court of Idaho, and the reduction of some of the existing debt service obligations as a result of refinancing efforts.

**Regulatory Impact:**

The City is authorized by the Constitution and Idaho statutes to issue refunding bonds to refund its outstanding bonds whenever the Mayor and Council determine that a savings or other beneficial public objective can be achieved thereby, without an approving vote of the electors of the City, and to sell such refunding bonds at private sale. Also, the Idaho Bond Bank Authority is an independent body corporate and politic created and operating pursuant to Title 67, Chapter 87, Idaho Code. The Bond Bank is authorized by the Idaho Code to issue bonds for the purpose of purchasing municipal bonds, including bonds evidencing loans undertaken by municipalities for purposes authorized by law.

**Conclusion:**

Staff recommends financing the project through the Idaho State Bond Bank and the adoption of Resolution 1893.

**Attachments:**

1. Ordinance
2. Promissory Note
3. Loan Agreement

SUMMARY OF  
ORDINANCE NO. 3037

AN ORDINANCE OF THE CITY OF TWIN FALLS, TWIN FALLS COUNTY, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A PARITY LIEN SEWER REVENUE REFUNDING BOND, SERIES 2012A, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$4,750,000, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY PROMISSORY NOTE, SERIES 2009; PROVIDING FOR THE ISSUANCE OF A PARITY LIEN SEWER REVENUE BOND, SERIES 2012B, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$8,000,000 TO PROVIDE FUNDS FOR THE ACQUISITION AND CONSTRUCTION OF CERTAIN WASTEWATER FACILITIES; AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A PARITY LIEN WATER REVENUE REFUNDING BOND, SERIES 2012C, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,590,000 TO PROVIDE FUNDS FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY PROMISSORY NOTE, SERIES 2002; ESTABLISHING FUNDS; PROVIDING FOR THE FORM, EXECUTION, REGISTRATION, MATURITY, AND PAYMENT OF THE BONDS; PROVIDING COVENANTS RELATING TO THE BONDS AND THE TAX-EXEMPT STATUS OF THE INTEREST ON THE BONDS; APPROVING A FORM OF LOAN AGREEMENT BETWEEN THE CITY AND THE IDAHO BOND BANK AUTHORITY; PROVIDING FOR RELATED MATTERS; APPROVING A SUMMARY OF THIS ORDINANCE FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

A summary of the principal provisions of Ordinance No. 3037 of the City of Twin Falls, Twin Falls County, Idaho, adopted on September 10, 2012, is as follows:

Section 1: Defines the terms and phrases used in the Ordinance.

Section 2: Makes findings with respect to the refunding of the City's Water and Sewer Revenue Bonds, and with respect to completion of the City's wastewater treatment plant project.

Section 3: Describes the City of Twin Falls Parity Lien Sewer Revenue Refunding Bond, Series 2012A (the "Series 2012A Bond"), the City of Twin Falls Parity Lien Sewer Revenue Refunding Bond, Series 2012B (the "Series 2012B Bond") and the City of Twin Falls Parity Lien Water Revenue Refunding Bond, Series 2012C (the "Series 2012C Bond") (the "Bonds").

Section 4: Provides for the manner and method of execution of the Bonds.

Section 5: Provides for the place and manner of payment of the Bonds.

Section 6: Appoints the City Treasurer as Bond Registrar.

- Section 7: Provides for the prepayment and defeasance of the Bond.
- Section 8: Establishes funds and provides for the refunding of the Refunded Bonds.
- Section 9: Provides for additional bonds.
- Section 10: Provides for investment of surplus funds.
- Section 11: Provides general covenants for the Bonds.
- Section 12: Provides special covenants for the Bonds.
- Section 13: Approves a Loan Agreement with, and provides for the sale of the Bonds to, the Idaho Bond Bank Authority.
- Section 14: Provides for amendments to the Ordinance.
- Section 15: Provides for validity of issuance.
- Section 16: Provides remedies for registered owners.
- Section 17: States that the Ordinance constitutes a contract with the Registered Owners of the Bonds.
- Section 18: Provides for severability.
- Section 19: Repeals prior inconsistent ordinances, to the extent of any inconsistency.
- Section 20: Authorizes the Mayor, City Clerk, and City Treasurer to execute any additional documents necessary to sell and deliver the Bonds.
- Section 21: Provides for the publication of the Ordinance or a summary thereof and the effective date of the Ordinance.

The full text of Ordinance No. 3037 is available at City Hall and will be provided to any citizen upon personal request during normal office hours.

DATED this 10<sup>th</sup> day of September, 2012.

CITY OF TWIN FALLS  
Twin Falls County, Idaho

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Mayor

ATTEST:

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City Clerk

CERTIFICATION OF ATTORNEY

I, the undersigned Special Counsel for the City of Twin Falls, Twin Falls County, Idaho, hereby certify that I have read the attached summary of Ordinance No. 3037 of the City of Twin Falls and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated as of the 10<sup>th</sup> day of September, 2012.

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Attorney at Law

SUMMARY OF  
ORDINANCE NO. 3037

AN ORDINANCE OF THE CITY OF TWIN FALLS, TWIN FALLS COUNTY, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A PARITY LIEN SEWER REVENUE REFUNDING BOND, SERIES 2012A, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$4,750,000, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY PROMISSORY NOTE, SERIES 2009; PROVIDING FOR THE ISSUANCE OF A PARITY LIEN SEWER REVENUE BOND, SERIES 2012B, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$8,000,000 TO PROVIDE FUNDS FOR THE ACQUISITION AND CONSTRUCTION OF CERTAIN WASTEWATER FACILITIES; AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A PARITY LIEN WATER REVENUE REFUNDING BOND, SERIES 2012C, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,590,000 TO PROVIDE FUNDS FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY PROMISSORY NOTE, SERIES 2002; ESTABLISHING FUNDS; PROVIDING FOR THE FORM, EXECUTION, REGISTRATION, MATURITY, AND PAYMENT OF THE BONDS; PROVIDING COVENANTS RELATING TO THE BONDS AND THE TAX-EXEMPT STATUS OF THE INTEREST ON THE BONDS; APPROVING A FORM OF LOAN AGREEMENT BETWEEN THE CITY AND THE IDAHO BOND BANK AUTHORITY; PROVIDING FOR RELATED MATTERS; APPROVING A SUMMARY OF THIS ORDINANCE FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

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Section 5: Provides for the place and manner of payment of the Bonds.

- Section 6: Appoints the City Treasurer as Bond Registrar.
- Section 7: Provides for the prepayment and defeasance of the Bond.
- Section 8: Establishes funds and provides for the refunding of the Refunded Bonds.
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- Section 20: Authorizes the Mayor, City Clerk, and City Treasurer to execute any additional documents necessary to sell and deliver the Bonds.
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The full text of Ordinance No. 3037 is available at City Hall and will be provided to any citizen upon personal request during normal office hours.

DATED this 10<sup>th</sup> day of September, 2012.

CITY OF TWIN FALLS  
Twin Falls County, Idaho

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

CERTIFICATION OF ATTORNEY

I, the undersigned Special Counsel for the City of Twin Falls, Twin Falls County, Idaho, hereby certify that I have read the attached summary of Ordinance No. 3037 of the City of Twin Falls and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated as of the 10<sup>th</sup> day of September, 2012.

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Attorney at Law

[Form of Bond]

UNITED STATES OF AMERICA

Registered  
No. One

Registered  
\$ \_\_\_\_\_

STATE OF IDAHO

COUNTY OF TWIN FALLS

CITY OF TWIN FALLS  
SEWER REFUNDING REVENUE BOND, SERIES 2012A

THE CITY OF TWIN FALLS, Twin Falls County, Idaho (the "City"), for value received, promises to pay from the special fund hereinafter described and in the manner hereinafter set forth, and not otherwise, to THE IDAHO BOND BANK AUTHORITY (the "Authority"), as the registered owner hereof, the principal sum of

\_\_\_\_\_ AND 00/100 DOLLARS

(\$ \_\_\_\_\_), together with interest on the unpaid balance at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum. Said principal and interest shall be payable in accordance with the following schedule:

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>
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Both principal of and interest on this Bond are payable in lawful money of the United States of America to the registered owner hereof whose name and address shall appear on the registration books of the City maintained by the City Treasurer (the "Bond Registrar"). Each installment of interest, or principal and interest, shall be paid to the registered owner whose name appears on the Bond Register on the fifteenth day next preceding the payment date, at the address appearing on the Bond Register, and shall be paid by check or draft of the Bond Registrar mailed to such registered owner on the due date at the address appearing on the Bond Register, or at such other address as may be furnished in writing by such registered owner to the Bond Registrar.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

The City has reserved the right, at its option, to prepay the principal amount outstanding, as provided in the Loan Agreement dated as of October 1, 2012, between the City and the Authority (the "Loan Agreement").

Interest on this Bond shall cease to accrue as to the amount of principal being prepaid after the date fixed for prepayment if notice has been properly given and funds equal to the amount of prepayment have been deposited at the place of payment at that time.

This Bond is issued for the purpose of paying the costs of currently refunding certain of the City's outstanding water and sewer revenue bonds, pursuant to Idaho Code, Title 50, Chapter 10 and Title 57, Chapters 2, 5, and 9, and also pursuant to Ordinance No. 3037 of the City, adopted on September 10, 2012 (the "Bond Ordinance"). This Bond further evidences the City's payment obligations under the Loan Agreement.

This Bond is issued pursuant to and in full compliance with the Constitution and statutes of the State of Idaho, particularly Chapter 10 of Title 50, and Chapters 2, 5, and 9 of Title 57, Idaho Code, and proceedings duly adopted and authorized by the Mayor and Council of the City acting for and on behalf of the City, more particularly the Bond Ordinance, for the purpose of providing funds to refund and redeem certain outstanding bonds of the City.

This Bond creates a first lien and charge upon the Net Revenues of the Sewer System on parity of lien with the Series 2012B Bond of the City and the Certificates of Participation, Series 1999 of the City, (as said terms are defined in the Bond Ordinance), and any additional bonds or other obligations which may hereafter be issued on a parity with the Bonds of this issue in accordance with the provisions of the Bond Ordinance, and superior to all other charges of any kind or nature. This Bond is a limited obligation of the City and is payable as to principal and interest solely from a special fund created by the Bond Ordinance and designated "City of Twin Falls Sewer Revenue Bond Fund" (the "Bond Fund"). For a more particular description of said Bond Fund, the revenues to be deposited therein, and the nature and extent of the security afforded thereby, reference is made to the provisions of the Bond Ordinance pursuant to which this Bond is issued, and such Bond Fund will be maintained.

This Bond is transferable by the registered owner hereof in person, or by his attorney duly authorized in writing, upon presentation and surrender of this Bond at the office of the Bond Registrar. Upon such transfer, a new Bond, of the same denomination, maturity, and interest rate, will be issued to the transferee, in exchange therefor.

Reference is hereby made to the Bond Ordinance for the covenants and declarations of the City and other terms and conditions under which this Bond and the Bonds of this issue have been issued. The covenants contained herein and in the Bond Ordinance may be discharged by making provision, at any time, for the payment of the principal of and interest on this Bond in the manner provided in the Bond Ordinance.

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The City and the Bond Registrar may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payments of principal hereof and interest due

hereon and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions, and things required by the Constitution and statutes of the State of Idaho to exist, to have happened, been done, and performed precedent to and in the issuance of this Bond have happened, been done, and performed, and that the issuance of this Bond and the Bonds of this issue does not violate any Constitutional, statutory, or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, City of Twin Falls, Twin Falls County, Idaho, has caused this Bond to be executed by the manual signature of the Mayor, countersigned by the manual signature of its Treasurer, and attested by the manual signature of its Clerk, and the seal of the City to be impressed hereon, as of this 11<sup>th</sup> day of October, 2012.

CITY OF TWIN FALLS  
Twin Falls County, Idaho

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Treasurer

ATTEST:

\_\_\_\_\_  
City Clerk

( S E A L )

**EXHIBIT C**

**Refunding and New Money Financing Form  
Revenue Bonds, Intercept - Sewer**

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**LOAN AGREEMENT**

Between

**IDAHO BOND BANK AUTHORITY**

And

**CITY OF TWIN FALLS, IDAHO**

Dated as of October 1, 2012

Relating to

**Idaho Bond Bank Authority  
Revenue Bonds  
Series 2012C**

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**LOAN AGREEMENT**  
**Refunding and New Money**

THIS LOAN AGREEMENT, dated as of October 1, 2012, by and between the CITY OF TWIN FALLS, IDAHO, a municipal corporation duly organized, existing and operating under the laws and Constitution of the State of Idaho and thereby a "Municipality" under the "Act" as defined below (the "Municipality"), and IDAHO BOND BANK AUTHORITY, an independent public body corporate and politic (the "Authority"),

W I T N E S S E T H :

WHEREAS, pursuant to the Idaho Code, Title 50, Chapter 10, on December 18, 2002, the Municipality has previously issued its Department of Environmental Quality Wastewater Note, Series 2002 (the "Prior Note") to finance improvements to its sewer system and the Municipality intends to issue its Sewer Revenue Refunding Bond, Series 2012 (the "2012 Bond") for the purpose of currently refunding the Prior Note and refinancing various sewer facilities (the "Refunding Project") as more fully described in Exhibit A hereto. The Municipality also intends to issue the 2012 Bond to finance the acquisition and construction of certain wastewater facilities also described on Exhibit A hereto (the "New Project," and together with the "Refunding Project, the "Project");

WHEREAS, the Idaho Bond Bank Authority (the "Authority") is an independent public body corporate and politic duly created and operating pursuant to Idaho Code, Title 67, Chapter 87 as amended or supplemented from time to time (the "Act");

WHEREAS, the Act authorizes and empowers the Authority to issue bonds for the purpose of purchasing municipal bonds, including loans undertaken by municipalities for any purpose authorized by law;

WHEREAS, the Authority intends to issue Idaho Bond Bank Authority Revenue Bonds, Series 2012C (the "Bonds");

WHEREAS, pursuant to Ordinance No. 3037 adopted on September 10, 2012 (the "Bond Ordinance"), the Municipality authorized the Municipal Bond and approved this Loan Agreement by and between the Municipality and the Authority (the "Loan Agreement"), in which the proceeds of the Loan shall be used to repay the Prior Note and to finance the New Project; and

NOW, THEREFORE, in consideration of the premises and the respective representations and covenants herein contained, the parties hereto agree as follows:

## ARTICLE 1 – DEFINITIONS

**Section 1.1 Definition of Terms.** Unless the context otherwise requires, the capitalized terms used in this Loan Agreement not otherwise defined herein shall have the meanings specified in Section 1.01 of the Master Trust Agreement, dated as of December 1, 2004 between the Authority and U.S. Bank National Association, as trustee (which has now been succeeded by The Bank of New York Mellon Trust Company, N.A., as amended relating to the Bonds (the “Master Trust Agreement”), and all supplemental trust agreements including the Eighteenth Supplemental Trust Agreement dated as of October 1, 2012 (the “Eighteenth Supplemental Trust Agreement”) by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as previously supplemented and amended or as it may from time to time be supplemented or amended as provided therein with the Master Trust Agreement and all Supplemental Trust Agreements including the Eighteenth Supplemental Trust Agreement referred to herein collectively as the “Trust Agreement.”

“Annual Debt Service” means, for any Fiscal Year, the sum of (1) the interest accruing on all Parity Debt during such Fiscal Year, assuming that all Parity Debt is retired as scheduled, plus (2) the principal amount (including principal due as sinking fund installment payments) allocable to all Parity Debt in such Fiscal Year, calculated as if such principal amounts were deemed to accrue daily during such Fiscal Year in equal amounts from, in each case, each payment date for principal or the date of delivery of such Parity Debt (provided that principal shall not be deemed to accrue for greater than a 365-day period prior to any payment date), as the case may be, to the next succeeding payment date for principal.

“Annual Expense Charges” means the annual charges for Trustee fees, continuing disclosure dissemination agent fees, audit fees, rebate calculation expenses or other expenses related to the Bonds or Loan and paid by the Authority which shall be reimbursed to the Authority by the Municipality as provided in Section 3.2(a) hereof upon receipt of invoice from the Authority or Trustee as well as any late fees or charges related to continuing disclosure or audit submission.

“Authority Fee” means the one-time fee payable by the Municipality to the Authority upon issuance and delivery of the Bonds in the amount set forth in Schedule 1 equal to 1/10 of one percent (.10%) of the total debt service to be paid on the Loan. The amount of any application fee previously paid by the Municipality to the Authority may be credited against the Authority Fee.

“Authorized Municipality Representative” means the Mayor or Municipality Clerk, or any such officer’s designee, or any other officer of the Municipality duly authorized by the Municipality.

“Bond Ordinance” means the Bond Ordinance as defined in the last WHEREAS Clause above.

“Certificate of the Municipality” means an instrument in writing signed by an Authorized Municipality Representative, such authorization to be evidenced by a certificate verifying the specimen signatures of such officers at the request of the Trustee.

“Consulting Engineer” means any qualified registered or licensed professional engineer practicing under the laws of the State of Idaho selected by the Municipality.

“Fiscal Year” means the fiscal year of the Municipality, beginning October 1 and ending September 30 each year.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Income Fund” means the fund by that name described in Section 4.2 hereof.

“Independent Certified Public Accountant” means any firm of certified public accountants appointed by the Municipality, which is independent of the Municipality and the Authority pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

“Judicial Confirmation Law” means Title 7, Chapter 13, Idaho Code, as amended.

“Loan” means the loan of proceeds of the Bonds as described in Section 3.1 hereof.

“Maximum Annual Debt Service” means, as of any date of calculation, the largest Annual Debt Service during the period from the date of such calculation through the final maturity date of all Parity Debt.

“Municipal Bond” or “Municipal Bonds” means the revenue bond or other evidence of indebtedness issued and delivered by the Municipality to evidence the Loan as provided in Section 3.1 hereof.

“Municipality” means the City of Twin Falls, Idaho, a municipal corporation of the State of Idaho and thereby a “Municipality” under the Act.

“Net Proceeds” means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

“New Project” shall have the meaning as set forth in the first WHEREAS clause above and in Exhibit A hereto.

“Operation and Maintenance Costs” means all reasonable and necessary current expenses of the Municipality, paid or accruing, for operating, maintaining and repairing the System, including legal and overhead expenses of the municipality directly related to the administration of the System, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries, administrative expenses, labor, and the cost of materials and supplies for current operation, but not including depreciation, legal liabilities not based on contract, the cost of improvements to the System, charges for accumulation of reserves, or payment of Parity Debt or Subordinate Obligations.

“Parity Debt” means the Repayment Installments, any Prior Obligations, and any Parity Obligations.

“Parity Obligation Payments” means the payments scheduled to be paid by the Municipality under and pursuant to the Parity Obligations, which payments are secured by a pledge of System Net Revenues on parity with the Repayment Installments as provided herein.

“Parity Obligations” means all obligations of the Municipality authorized and executed by the Municipality other than the Repayment Installments, with Parity Obligation Payments which are secured by a pledge of the System Net Revenues on parity with the Repayment Installments as provided herein.

“Prior Note” means the Municipality’s Department of Environmental Quality Note, Series 2002.

“Prior Obligations” means the obligations, if any, specified in Schedule 1 attached hereto.

“Project” means the New Project and Refunding Project as described in the first WHEREAS clause above and as further described in Exhibit A hereto.

“Rate Stabilization Account” means the Rate Stabilization Account established pursuant to Section 4.5 hereof.

“Refunding Project” shall have the meaning set forth in the first WHEREAS cause above.

“Repayment Amount” means the amount specified in Schedule 1 attached hereto.

“Repayment Installment” means any amount that the Municipality is required to pay directly to the Trustee pursuant to Section 3.2(a) of this Loan Agreement, as a

repayment of the loan made to the Municipality under the Loan Agreement, which amount is determined in accordance with Section 4.2(a) thereof.

“Repayment Installment Date” means the dates corresponding to the Repayment Installments, as set forth in Exhibit B, however, payments must be transmitted to the Trustee at least fifteen (15) days prior to the Repayment Installment Dates on Exhibit B.

“Reserve Fund” means the reserve fund for the Loan in the amount of the Reserve Requirement and to be funded from funds of the Municipality if required as provided in Section 4.4 hereof.

“Reserve Requirement” shall mean the monies to be held by the Municipality in the Reserve Fund to secure payment of debt service on the Loan and the Municipal Bond which shall be an amount equal to the amounts required under Section 4.4 hereof, provided that said amount shall not exceed the lesser of: (i) 10% of the proceeds of the Loan, (ii) maximum annual principal and interest on the Loan, or (iii) 125% of average annual principal and interest on the Loan Obligation.

“Revenue Fund” means the fund so designated established pursuant to the Trust Agreement and held by the Trustee.

“Sewer Revenue Fund” means the Municipality’s Sewer Revenue Fund, established by the Bond Ordinance.

“Subordinate Obligations” means the obligations of the Municipality that are subordinate in payment to the Repayment Installments.

“System” means all of the Municipality’s sewer system, and its sewer facilities and properties now owned or hereafter acquired, whether situated within or without Municipality boundaries.

“System Net Revenues” means the remaining System Revenues after deducting Operation and Maintenance Expenses.

“System Revenues” means all gross income and revenue received or receivable by the Municipality from the ownership or operation of the System, determined in accordance with Generally Accepted Accounting Principles, excluding grants, hookup fees and other non recurring revenue, but including without limitation, transfers from the Rate Stabilization Account and including all fees (excluding connection fees), rates, charges and all amounts paid under any contracts received by or owed to the Municipality in connection with the operation of the System and all proceeds of insurance relating to the System and investment income allocable to the System and all other income and revenue howsoever derived by the Municipality from the ownership, or operation of the System or arising from the System.

**Section 1.2 Number and Gender.** The singular form of any word used herein, including the terms defined in Section 1.01 of the Trust Agreement, shall include the plural, and vice versa. The use herein of a word of any gender shall include all genders.

**Section 1.3 Articles, Sections, Etc.** Unless otherwise specified, references to Articles, Sections and other subdivisions of this Loan Agreement are to the designated Articles, Sections and other subdivisions of this Loan Agreement as originally executed. The words "hereof," "herein," "hereunder" and words of similar import refer to this Loan Agreement as a whole. The headings or titles of the several articles and sections, and the table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions hereof.

## **ARTICLE II – REPRESENTATIONS**

**Section 2.1 Representations of The Municipality.** The Municipality makes the following representations as the basis for its undertakings herein contained:

(a) The Municipality is a municipal corporation in the State of Idaho. Under the provisions of Article VIII, Section 3 of the Idaho Constitution, Title 50, Idaho Code and the Act, the Municipality has the power to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder. The Project constitutes an "ordinary and necessary expense" of the Municipality under Article VIII, Section 3, of the Idaho Constitution for which no election is required. The validity of the Project and the issuance of the Municipal Bond have been judicially confirmed in accordance with the Judicial Confirmation Law. By proper action, the Municipality has been duly authorized to execute, deliver and duly perform this Loan Agreement.

(b) The Municipality is not in default under any of the provisions of the laws of the State of Idaho which default would affect its existence or its powers referred to in subsection (a) of this Section 2.1.

(c) The Municipality has found and determined and hereby finds and determines that all requirements of the Act with respect to the execution of this Loan Agreement have been complied with and that financing the Project by entering into this Loan Agreement will be in furtherance of the purposes of the Act.

(d) The Project consists and will consist of the refinancing of the Refunding Project described in Exhibit A hereto and the financing of the New Project as described on Exhibit A hereto. The Municipality shall make no changes to any portion of the Project or to the operation thereof which would impair the exemption from gross income of the interest on the Bonds or the Municipal Bond for federal income tax purposes. In particular, the Municipality shall comply with

all requirements of the Tax Certificate, dated the Issue Date (the "Tax Certificate"), which is hereby incorporated by reference herein.

**Section 2.2 Representations of the Authority.** The Authority makes the following representations as the basis for its undertakings herein contained:

(a) The Authority is an independent public body corporate and politic duly formed under the laws of the State of Idaho and has the power to enter into and has duly authorized the execution and delivery of the Trust Agreement, this Loan Agreement and all other documents contemplated hereby to be executed by the Authority.

(b) The execution and delivery of the Bonds, this Loan Agreement, and the Trust Agreement and the consummation of the transactions contemplated hereby and thereby do not conflict with or constitute a breach of or default under the Act or, to the best knowledge of the Authority, under the terms and conditions of any agreement or commitment to which the Authority is a party or by which the Issuer is bound.

(c) The Authority will issue, execute and deliver the Bonds upon the terms and conditions set forth in the Trust Agreement and will use a portion of proceeds of the issuance of the Bonds for the Loan to finance the Project in accordance with this Loan Agreement.

### **ARTICLE III - LOAN TO MUNICIPALITY; REPAYMENT PROVISIONS**

**Section 3.1 Loan to Municipality;** The Authority covenants and agrees, upon the terms and conditions in this Loan Agreement, to make a Loan of the amount specified in Schedule 1 attached hereto to the Municipality for the purpose of financing the New Project and refunding the Prior Note through payment of Loan Proceeds. The Loan is based on the purchase price of the Municipal Bond at the par amount thereof plus a premium or less a discount as described in Schedule 1 hereto. Said Loan shall be disbursed as described in Schedule 1. Pursuant to said covenant and agreement, the Authority will issue the Bonds upon the same terms and conditions contained in this Loan Agreement and the Trust Agreement and will cause the Bond proceeds to be applied as provided in Article III thereof. The Municipality shall issue and sell its Municipal Bond to the Authority as evidence of its Loan obligation hereunder and the payments due on the Municipal Bond shall equal the Repayment Installments hereunder.

#### **Section 3.2 Repayment and Payment of Other Amounts Payable.**

(a) The Municipality covenants and agrees to pay to the Trustee the Repayment Installments together with the Annual Expense Charges and all other amounts then due hereunder on the Loan to the Municipality pursuant to Section 3.1 hereof, at least fifteen (15) days prior to the Repayment Installment

Dates as set forth in Exhibit B hereto. The Trustee shall transmit the Annual Expense Charges to the Authority.

Any amount held by the Trustee in the Revenue Fund on the Municipality's behalf on any Repayment Installment Date hereunder shall be credited against the Repayment Installment due on such date to the extent available for such purpose; and provided further that, subject to the provisions of this paragraph, if at any time the amounts held by the Trustee in the Revenue Fund on the Municipality's behalf are sufficient to pay all of the Repayment Installments, the Municipality shall be relieved of any obligation to make any further payments under the provisions of this Section. Notwithstanding the foregoing, if on any date the amount held by the Trustee in the Revenue Fund on the Municipality's behalf is insufficient to make any required Repayment Installment on any Repayment Installment Date, the Municipality shall forthwith pay such deficiency as a Repayment Installment hereunder.

(b) Upon written request of the Trustee, the Municipality shall pay any Repayment Installment directly to the Trustee.

**Section 3.3 Unconditional Obligation.** The obligations of the Municipality to make the payments required by Section 3.2 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Authority, and during the term of this Loan Agreement, the Municipality shall pay absolutely net the payments to be made on account of the loan as prescribed in Section 3.2 and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off; provided, that the Municipality's obligation to make payments under this Loan Agreement shall be limited to the extent of System Net Revenues and other legally available funds of the Municipality to be appropriated as needed to make the payments required under this Agreement and the Municipal Bond, but is not a general obligation of the Municipality provided that the State Intercept under Section 3.6 hereof shall apply. Until such time as the Repayment Installments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article VIII of this Loan Agreement), the Municipality (i) will not suspend or discontinue any payments provided for in Section 3.2 hereof; (ii) will perform and observe all of its other covenants contained in this Loan Agreement; and (iii) will not terminate this Loan Agreement for any cause, including, without limitation, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Idaho or any political subdivision of either of these, or any failure of the Authority or the Trustee to perform and observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement or the Trust Agreement, except to the extent permitted by this Loan Agreement.

**Section 3.4 Assignment of Authority's Rights.** As security for the payment of the Bonds, the Authority will assign to the Trustee the Authority's rights, but not its obligations, under this Loan Agreement, including the right to receive payments hereunder (except (i) the rights of the Authority to receive notices under this Loan Agreement, (ii) the right of the Authority to receive certain payments, if any, with respect to fees, expenses and indemnification and certain other purposes under Sections this Loan Agreement, and (iii) the right of the Authority to give approvals or consents pursuant to this Loan Agreement) and the Authority hereby directs the Municipality to make the payments required hereunder (except such payments for fees, expenses and indemnification) directly to the Trustee. The Municipality hereby assents to such assignment and agrees to pay the Repayment Installments directly to the Trustee (subject to the provisions of Section 3.2(b)) without defense or set-off by reason of any dispute between the Municipality and the Authority or the Trustee.

**Section 3.5 Amounts Remaining in Funds.** It is agreed by the parties hereto that after payment in full of (i) the Repayment Installments, or after provision for such payment shall have been made as provided in Article XIII, (ii) the fees and expenses of the Authority in accordance with this Loan Agreement, (iii) the fees, charges and expenses of the Trustee, the Registrar and Paying Agent in accordance with the Trust Agreement and this Loan Agreement and (iv) all other amounts required to be paid under this Loan Agreement and the Trust Agreement, any amounts remaining in any fund held by the Trustee under the Trust Agreement shall belong, subject to the requirements of Section 7.03 of the Trust Agreement, to the Authority and be paid to the Authority by the Trustee, provided that any earnings on payments by the Municipality to the Trustee under Section 3.2(a) prior to the Repayment Installment Dates shall be deducted from said remaining amounts and credited to the Municipality.

**Section 3.6 Timeliness Of Payments; Consent to State Intercept; Repayment.**

(a) The Municipality understands that the State intercept and repayment procedures contained in and required by Section 67-8727, Idaho Code, as amended, and as set forth herein operate as a matter of law with respect to the Loan covered by this Loan Agreement without the need for consent thereto by the Municipality. The Municipality also understands that said intercept procedures will provide funds to pay the Authority Bonds (not the Loan obligations).

(b) If the Municipality is unable to transfer all of its Repayment Installment to the Trustee at least 15 days before the Repayment Installment Date, the Municipality shall immediately notify the Trustee, the Authority and the State Treasurer by: (i) telephone; (ii) a writing sent by facsimile transmission; and (iii) a writing sent by first-class United States mail. If sufficient funds are not transferred to the Trustee for the Bonds of the Authority that are secured by this Loan Agreement at least ten (10) days before the scheduled debt service payment date of the Bonds, the Trustee shall transfer any available funds pledged to secure payment of the Bonds in sufficient amounts to make up any shortfall in the

amount necessary to pay debt service on the Bonds on the scheduled payment date and deposit such amount in the debt service payment fund for those Bonds.

(c) If, as a result of the failure of the Municipality to make Repayment Installments in a timely manner, the Trustee shall transfer funds pursuant to paragraph (b) of this section to pay debt service on the Bonds or if there are not sufficient funds available pursuant to paragraph (b) of this section to make up for any shortfall in the amount necessary to pay debt service on the Bonds, at least ten (10) days before the scheduled debt service payment date of the Bonds, the Trustee shall notify the Authority and the State Treasurer by: (i) telephone; (ii) a writing sent by facsimile transmission; and (iii) a writing sent by first-class United States mail.

(d) To the extent provided and required by Section 67-8727, Idaho Code, as amended, and upon the notice provided in subsection (c) of this section. The State Treasurer shall (i) immediately intercept to the extent permitted by law any payments available from: (A) the receipts of any payment of property taxes; or (B) sales tax moneys that would be distributed pursuant to section 63-3638, Idaho Code; or (C) liquor tax moneys that would be distributed pursuant to Section 23-404, Idaho Code, as amended; or (D) any other source of operating moneys provided by the State to the Municipality that would otherwise be paid to the Municipality by the State.

(e) If the State has made all or part of a Repayment Installment on behalf of the Municipality from moneys representing sales tax receipts transferred from the State general fund pursuant to Section 67-8716, Idaho Code, the Municipality shall: (a) reimburse all moneys drawn by the State Treasurer on its behalf; (b) pay interest to the State on all moneys paid by the State from the date the moneys are drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus five percent (5%); and (c) pay all penalties required by the Act.

(f) The State Treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the Municipality on the State, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the State to make Repayment Installments.

(g) The State Treasurer may, after considering the circumstances giving rise to the failure of the Municipality to make its Repayment Installments in a timely manner, impose on the Municipality a penalty of not more than five percent (5%) of the amount paid by the State for each instance in which a payment by the State is made.

(h) (i) If the State Treasurer determines that amounts obtained under this section will not reimburse the State in full within one (1) year from the

State's payment of the Municipality's scheduled Repayment Installments, the State Treasurer shall, subject to clause (ii) hereof, pursue any legal action, including mandamus, against the Municipality to compel it to take any action required by the Act, including:

- (1) To the extent permitted by law provide System Net Revenues or other legally available funds to pay Repayment Installments when due; and
  - (2) Meet its repayment obligations to the State.
- (ii) In pursuing its rights under paragraph (i) of this subsection (h), the State shall have the same substantive and procedural rights as would a holder of this Loan Agreement.
  - (iii) The attorney general shall assist the State Treasurer in these duties.
  - (iv) The Municipality shall pay the attorney's fees, expenses and costs of the State Treasurer and the State attorney general.

#### ARTICLE IV – SECURITY

**Section 4.1 Pledge of System Net Revenues.** All System Net Revenues and other legally available funds of the Municipality to be appropriated as needed to make the payments required under this Agreement and the Municipal Bond, are hereby irrevocably pledged to the payment of the Repayment Installments as provided herein and the System Net Revenues and such other funds shall not be used for any other purpose while any of the Repayment Installments remain unpaid; *provided* that (i) any Prior Obligations shall be paid on parity with the Repayment Installments, (ii) out of the System Net Revenues and such other funds there may be apportioned such sums for such purposes as are expressly permitted herein. This pledge, together with the pledge created by all other Parity Debt, shall constitute a first lien on System Net Revenues and, subject to application of amounts on deposit therein as permitted herein, the Income Fund and other funds and accounts created hereunder for the payment of the Repayment Installments and all other Parity Debt in accordance with the terms hereof and of the Trust Agreement.

**Section 4.2 Allocation of System Revenues.** In order to carry out and effectuate the pledge and lien contained herein, the Municipality agrees and covenants that all System Revenues shall be received by the Municipality in trust hereunder and shall be deposited when and as received in the "Sewer Revenue Fund", a special fund hereby designated as the "Income Fund", which fund is hereby established and which fund the Municipality agrees and covenants to maintain and to hold separate and apart from other funds so long as any Repayment Installments remain unpaid. To the extent the Municipality has an existing fund which satisfies the foregoing requirements, then such shall be deemed to be the "Income Fund" and the Municipality shall not be required to create a new fund. The Municipality

may maintain separate accounts within the Income Fund. The amounts in the Income Fund shall be invested in investments permitted by State law. Moneys in the Income Fund shall be used and applied by the Municipality as provided in this Loan Agreement.

The Municipality shall, from the moneys in the Income Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. Thereafter, all remaining moneys in the Income Fund shall be set aside by the Municipality at the following times for the transfer to the following respective special funds in the following order of priority; and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth in this Section.

(a) Repayment Installments. Not later than fifteen (15) days prior to each Repayment Installment Date, the Municipality shall, from the moneys in the Income Fund, transfer to the Trustee the Repayment Installment due and payable on that Repayment Installment Date. The Municipality shall also, from the moneys in the Income Fund, transfer to the applicable trustee, if any, for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other Parity Obligation Payments in accordance with the provisions of any Parity Obligation.

(b) Surplus. Moneys on deposit in the Income Fund not necessary to make any of the payments required above, may be expended by the Municipality at any time for any purpose permitted by law, including but not limited to payments with respect to Subordinate Obligations.

**Section 4.3 Additional Parity Debt.** The Municipality may at any time enter into any Parity Debt; *provided:*

(a) The Municipality shall be in compliance with all agreements, conditions, covenants and terms contained herein, and a Certificate of the Municipality to that effect shall have been filed with the Trustee;

(b) The Parity Debt shall have been duly authorized pursuant to all applicable laws;

(c) The most recent available audit of the Municipality shows that the System Net Revenues for the Fiscal Year immediately preceding the date of the resolution authorizing the Parity Debt shall have been sufficient to pay an amount representing 125% of Maximum Annual Debt Service;

(d) As an alternative to the audit report requirement in 4.3(c), the Municipality may utilize a report of the Consulting Engineer that shows that the System Net

Revenues for the remainder of the projected life of the Parity Debt will be at least equal to 125% of the Maximum Annual Debt Service. In determining whether Parity Debt may be issued, the Consulting Engineer shall consider any probable increase (but not decrease) in Operation and Maintenance Costs, and there may be added to such System Net Revenues an allowance for net revenues from any improvements to the System to be made with the proceeds of such Parity Debt and also for net revenues from any improvements to the System which have been made from money from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 75% of the estimated additional average annual net revenues to be derived from each such improvement for the first 36 month period in which each such improvement is in operation.

Nothing contained in this Section shall limit the issuance of any additional obligations of the Municipality payable from the System Net Revenues and secured by a lien and charge on the System Net Revenues if, after the issuance and delivery of such additional obligations, none of the Repayment Installments shall be unpaid. Furthermore, nothing contained in this Section shall limit the issuance of any Parity Debt for the purpose of refunding Outstanding Parity Debt or for any Subordinate Obligations.

**Section 4.4 Reserve Fund Deposit** If the Municipality fails to comply with the requirements as to System rates and charges set forth in Section 5.11 hereof and is unable to bring itself into compliance within 60 days after discovery by the Municipality of such failure, it shall immediately notify the Authority and the Trustee and shall establish from funds of Municipality a Reserve Fund held by the Municipality funded in the amount of 2.5% of the outstanding principal balance of the Loan during the first succeeding Fiscal Year, 5.0% of the outstanding principal balance of the Loan in the second succeeding Fiscal Year, 7.5% of the outstanding principal balance of the Loan in the third succeeding Fiscal Year and 10% of outstanding principal balance of the Loan in the fourth succeeding Fiscal Year and 10% of the outstanding principal balance of the Loan for each Fiscal Year, provided that at no time shall the amount in the Reserve Fund exceed the Reserve Requirement. The required percentage amounts shall be fully funded by the Municipality no later than the end of the applicable Fiscal Year. Such Reserve Fund shall be drawn upon if needed to make the Repayment Installments hereunder. The Municipality shall notify the Trustee of any drawing on the Reserve Fund within ten (10) days of the date of such drawing. Provided further, in the event that a drawing on the said Reserve Fund in order to make the Repayment Installments by Municipality on the Loan results in a balance in such fund lower than the Reserve Requirement, the Municipality shall replenish said account to the Reserve Requirement from System Net Revenues as soon as possible but not later than one (1) year from the date of such drawing.

**Section 4.5 Rate Stabilization Account.** The Municipality shall establish and maintain a Rate Stabilization Account. Monies in the Rate Stabilization Account may be transferred as determined from time to time by the Municipality. The Municipality may transfer funds into the Rate Stabilization Account from the Income Fund (Sewer Revenue

Fund) or any other legally available source. The Municipality may transfer funds into the Rate Stabilization Account or withdraw funds from the Rate Stabilization Account at any time without limitation subject to the following provisions.

(a) Money in the Rate Stabilization Account may be withdrawn at any time and used for any purpose for which System Revenues may be used. Amounts withdrawn from the Rate Stabilization Account shall increase System Revenues for the period for which they are withdrawn, and amounts deposited in the Rate Stabilization Account shall reduce System Revenues for the period for which they are deposited. Credits from the Rate Stabilization Account may be posted in accordance with governmental accounting practices and procedures. Credits to or from the Rate Stabilization Account may relate to a prior Fiscal Year consistent with governmental accounting practices and procedures provided that such credits occur within the first quarter following the prior Fiscal Year. Earnings on the Rate Stabilization Account shall be credited to the Income Fund (the Sewer Revenue Fund) and shall be included in the definition of System Revenues for purposes of calculating debt service coverage.

(b) Unless otherwise excluded, funds withdrawn from the Rate Stabilization Account shall be included as System Net Revenues for all rate requirement purposes under Section 5.11 hereof.

**Section 4.6. Transfers from Rate Stabilization Account.** The Municipality may transfer funds from the Rate Stabilization Account to satisfy the rate requirements in Section 5.11 hereof. If the Municipality transfers funds from the Rate Stabilization Account during the current Fiscal Year or within the first quarter of the following Fiscal Year and designates that such transfer shall relate to the immediately preceding Fiscal Year to satisfy the following rate covenant. The Municipality covenants for the benefit of the Authority and its bondholders that going forward it will, as needed, charge rates and fees in connection with operation of the System which, when combined with other System Revenues, are adequate to generate System Net Revenues (exclusive of transfers from the Rate Stabilization Account) in the current Fiscal Year at least equal to 1.25 times the Annual Bond Debt Service due in that Fiscal Year. If the System Net Revenues fail to meet this level, the Municipality will promptly increase its rates and fees or reduce expenses to a level so that System Net Revenues (exclusive of transfers from the Rate Stabilization Account) are projected to meet the required level. The Municipality will demonstrate its compliance with the provisions of this Section 4.6 by providing a report to the Authority and the Trustee, if any, at the time of delivery of the Municipality's year-end audit that the Municipality is not out of compliance with Section 5.11. This report will demonstrate the Municipality's compliance with this covenant, or the methods by which the Municipality intends to achieve compliance with this covenant.

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## ARTICLE V - SPECIAL COVENANTS AND AGREEMENTS

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**Section 5.1 Punctual Payment.** The Municipality will punctually pay all Repayment Installments in strict conformity with the terms hereof and will faithfully satisfy, observe and perform all agreements, conditions, covenants and terms hereof.

**Section 5.2 Legal Existence.** The Municipality will use all means legally available to maintain its existence.

**Section 5.3 Against Encumbrances.** The Municipality will not mortgage or otherwise encumber, pledge or place any charge upon any of the System Net Revenues except as provided herein, and will not issue any obligations secured by System Net Revenues senior to the Parity Debt; *provided*, that the Municipality may at any time issue any Subordinate Obligations.

**Section 5.4 Against Sale or Other Disposition of the System.** The Municipality will not sell or otherwise dispose of the System or any part thereof essential to the proper operation of the System or to the maintenance of the System Net Revenues, unless the Repayment Installments have been fully paid or provision has been made therefor in accordance with Article VIII hereof. The Municipality will not enter into any lease or agreement which impairs the operation of the System or any part thereof necessary to secure adequate System Net Revenues for the payment of the Repayment Installments, or which would otherwise impair the rights of the Owners with respect to the System Net Revenues or the operation of the System.

**Section 5.5 Maintenance and Operation of System.** The Municipality agrees that as long as it owns the Project it will (i) maintain, or cause to be maintained, the Project in as reasonably safe condition as its operations shall permit and (ii) maintain, or cause to be maintained, the Project in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

**Section 5.6 Right of Access to the System.** The Municipality agrees that during the term of this Loan Agreement, the Authority, the Trustee and the duly authorized agents of either of them shall have the right at all reasonable times during normal business hours to enter upon the site of the System to examine and inspect such System; provided, however, that this right is subject to federal and State of Idaho laws and regulations applicable to such site. The rights of access hereby reserved to the Authority and the Trustee may be exercised only after such agent shall have executed release of liability (which release shall not limit any of the Municipality's obligations hereunder) and secrecy agreements if requested by the Municipality in the form then currently used by the Municipality, and if the Trustee is the signatory, as agreed to by the Trustee, and nothing contained in this Section or in any other provision of this Loan Agreement shall be construed to entitle the Authority or the Trustee to any information or inspection involving the confidential knowledge of the Municipality.

**Section 5.7 Tax Exempt Status of Bonds.**

(a) It is the intention of the parties hereto that interest on the Bonds, shall be and remain excluded from gross income for federal income tax purposes. To that end, the covenants and agreements of the Authority and the Municipality in this Section and in the Tax Certificate are for the benefit of the Trustee and each and every person who at any time will be a holder of the Bonds. Without limiting the generality of the foregoing, the Municipality and the Authority agree that there shall be paid from time to time the "Municipality's Share" of all amounts required to be rebated to the United States pursuant to the rebate requirement with respect to the Bonds (the "Rebate Requirement") under Section 148 of the Code and the Tax Certificate. The "Municipality's Share" means the amount of the Rebate Requirement relating to the Municipal Bonds, determined as specified in the Tax Certificate, including (i) treating as the yield on the Municipal Bonds the yield on the Authority's Series 2012C Bonds allocated to the Municipal Bonds and (ii) treating any amounts held by the Authority and allocable to the Municipal Bonds as proceeds of the Municipal Bonds. This covenant shall survive payment in full or defeasance of the Bonds and the Municipal Bonds. The Municipality specifically covenants to pay or cause to be paid for and on behalf of the Authority to the United States at the times and in the amounts determined under Section 7.03 of the Trust Agreement the Municipality's share of the Rebate Requirement as described in the Tax Certificate and the Trust Agreement. The Authority shall not be liable to make any such payment except from funds provided by the Municipality for such purpose.

(b) The Authority covenants and agrees that it has not taken and will not take any action which results in interest to be paid on the Bonds being included in gross income of the holders of the Bonds for federal income tax purposes, and the Municipality covenants and agrees that it has not taken or permitted to be taken and will not take or permit to be taken any action which will cause the interest on the Bonds to become includable in gross income for federal income tax purposes. The Municipality acknowledges having read Section 7.03 of the Trust Agreement and agrees to perform all duties imposed on it by such Section, by this Section and by the Tax Certificate. Insofar as Section 7.03 of the Trust Agreement and the Tax Certificate impose duties and responsibilities on the Authority or the Municipality, they are specifically incorporated herein by reference.

(c) Notwithstanding any provision of this Section 5.7 or Section 7.03 of the Trust Agreement, if the Municipality shall provide to the Authority and the Trustee an Opinion of Bond Counsel to the effect that any specified action required under this Section 5.7 and Section 7.03 of the Trust Agreement is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds or Municipal Bonds, the Municipality, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and the covenants set forth in this Section 5.7 shall be deemed to be modified to that extent.

- (d) The Municipality agrees to comply with the Authority's Post Issuance Tax Compliance Procedures, the current form of which is attached hereto as Exhibit F.

**Section 5.8 Notices to Trustee and Authority.** The Municipality hereby agrees to provide the Trustee and the Authority with notice of any event of which it has knowledge which, with the passage of time or the giving of notice, would be an Event of Default, such notice to include a description of the nature of such event and what steps are being taken to remedy such Event of Default.

**Section 5.9 Continuing Disclosure.** The Municipality hereby covenants and agrees to comply with the continuing disclosure requirements for the Bonds as promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, including those requirements set forth below. Notwithstanding any other provision of this Agreement, failure of the Municipality to comply with the requirements of Rule 15c2-12 applicable to the Bonds, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default hereunder or under the Trust Agreement; however, any bondholder or beneficial owner of any Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Municipality to comply with its obligations pursuant to this Section 5.9.

- (a) **Definitions.** In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Section unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Municipality pursuant to, and as described in, Sections 5.9(b) and 5.9(c).

“Beneficial Owner” shall mean any person who has the power, directly or indirectly, to vote or consent with respect to, or dispose of ownership of, any of the Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the Treasurer of the Municipality or his or her designee, or such other officer or employee as the Municipality shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Municipality and which has filed with the Trustee a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access System of the Municipal Securities Rule Making Board as provided for by the SEC, found at [www.emma.msrb.org](http://www.emma.msrb.org).

“Listed Events” shall mean any of the events listed in Section 5.9(d) hereof.

“Owner” means an owner of the Bonds and includes Beneficial Owners.

“Participating Underwriter” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean the Municipal Securities Rule Making Board (“MSRB”) or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through EMMA.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” means the Securities and Exchange Commission.

(b) Provision of Annual Reports.

(i) The Municipality shall, with the assistance of the Dissemination Agent, not later than six months after the Issue Date for the 2011 Fiscal Year, and six months after the end of the Municipality’s fiscal year (presently September 30) for the 2012 and all subsequent Fiscal Years, provide to the Repository and the Authority an Annual Report which is consistent with the requirements of Section 5.9(c) hereof. The filing shall be transmitted by the Dissemination Agent to the Repository and each Annual Report must be submitted in electronic format, accompanied by such identifying information as is prescribed by the Repository, and may include by reference other information as provided in Section 5.9(c) hereof; provided that the audited financial statements of the Municipality may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Municipality’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5.9(d)(vi).

(ii) Not later than fifteen (15) Business Days prior to the date specified in subsection (b)(i) for providing the Annual Report to the Repository, the Municipality shall provide the Annual Report, to the Dissemination Agent, to the Trustee (if the trustee is not the Dissemination Agent) and to the Authority. If by(15) Business Days prior to the date specified in subsection (b)(i), the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Municipality to determine if the Municipality is unable to provide to the Repository in compliance with the first sentence of this subsection (ii). Failure to provide the Annual Report to the Dissemination Agent by said date may subject the Municipality to late fees in the amount as listed on Exhibit E and payment of any expenses of the Trustee or the Authority in enforcing this provision. If the Municipality has prior loans with the Authority, then those loans shall be subject to the same provisions.

(iii) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the Repository by the date required in subsection (i) the Dissemination Agent shall send a notice to the Repository in substantially the form as Exhibit D2 attached.

(iv) The Dissemination Agent (currently the Trustee) shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of the Repository; and

(2) file a report with the Municipality, the Authority and the Trustee (if the Dissemination Agent is not the Trustee) certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided to the Repository.

(c) Content of Annual Reports. The Municipality's Annual Report shall contain or include by reference the following:

(i) The audited financial statements for the Municipality for the most recently ended fiscal year, currently prepared, to the extent feasible, in substantial conformance with generally accepted accounting principles applicable from time to time to governmental entities, with any permitted exception and an adopted budget for the then current fiscal year.

(ii) An Annual Report in the form attached hereto as Exhibit D1 as to outstanding debt, litigation, compliance with regulatory matters and related items.

(d) Reporting of Significant Events.

(i) Pursuant to the provisions of this Section 5, the Municipality shall give or cause to be given, notice of the occurrence of any of the following Events with respect to the Bonds in a timely manner not more than ten (10) Business Days after the event:

- (1) Principal and interest payment delinquencies.
- (2) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (3) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (4) Substitution of credit or liquidity providers, or their failure to perform;
- (5) Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds;
- (6) Defeasances;
- (7) Tender offers;
- (8) Bankruptcy, insolvency, receivership or similar proceedings;
- (9) Rating changes;

(ii) Pursuant to the provisions of this Section 5, the Borrower shall give or cause to be given, notice of the occurrence of any of the following Events with respect to the Bonds in a timely manner not more than ten (10) Business Days after the event, if material:

- (1) Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated persons or their termination.
- (2) Appointment of a successor or additional trustee or the change of the name of trustee;
- (3) Non-payment related defaults;

- (4) Modifications to the rights of the owners of the Bonds;
- (5) Bond calls;
- (6) Release, substitution or sale of property securing repayment of the Bonds.

(iii) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Disclosure Representative, inform such person of the event, and request that the Municipality promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (vii). The Dissemination Agent shall have no duty or obligation to determine whether such Listed Events reflect financial difficulty or to determine the materiality of such Listed Events when in forming the Disclosure Representative of such Listed Event.

(iv) Whenever the Municipality obtains knowledge of the occurrence of a Listed Event under (ii) whether because of a notice from the Dissemination Agent pursuant to subsection (iii) or otherwise, the Municipality shall as soon as possible determine if such event would be material under applicable federal securities laws.

(v) If the Municipality has determined that knowledge of the occurrence of a Listed Event under (ii) would be material under applicable federal securities laws, the Municipality shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (vii).

(vi) If in response to a request under subsection (iii), the Municipality determines that the Listed Event would not be material under applicable federal securities laws, the Municipality shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (vii).

(vii) If the Dissemination Agent has been instructed by the Municipality to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the Repository.

(e) Termination of Reporting Obligation. The Municipality's obligations under this Disclosure Agreement shall terminate upon the legal defeasance or discharge of this Loan Agreement in accordance with Section 8.1. If such termination occurs prior to the final maturity of the Municipal Bonds, the

Municipality shall give notice of such termination in the same manner as for a Listed Event under Section 5.9(d)(vii).

(f) Dissemination Agent. The Municipality may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and shall pay the fees and costs thereof, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Municipality pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be the Trustee. It is understood and agreed that any information that the Dissemination Agent may be instructed to file with the Municipal Securities Rulemaking Board and the Repository shall be prepared and provided to it by the Municipality. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with the Municipality shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from the Municipality as the Authority.

(g) Amendment; Waiver. Notwithstanding any other provision of this Section 5.9, the Municipality and the Authority (or upon assignment of this Loan Agreement by the Authority, the Trustee) may amend this Section 5.9 (and the Trustee shall agree to any amendment so reasonably requested by the Municipality, to the extent that such amendment does not adversely affect the Trustee's or the Dissemination Agent's rights, protections or duties), and any provision of this Section 5.9 may be waived, provided that the following conditions are satisfied:

(i) If the amendment or waiver relates to the provisions of Section 5.9(b)(i), Section 5.9(c), or Section 5.9(d)(i) or (ii), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(ii) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(iii) The amendment or waiver either (1) is approved by the Owners of the Bonds in the same manner as provided in the Trust Agreement for amendments to the Trust Agreement with the consent of Owners, or (2) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners and Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Section 5.9, the Municipality shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Municipality. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (1) notice of such change shall be given in the same manner as for a Listed Event under Section 5.9(d)(vi), and (2) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

(h) Additional Information. Nothing in this Section 5.9 shall be deemed to prevent the Municipality from disseminating any other information, using the means of dissemination set forth in this Section 5.9 or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Section 5.9. If the Municipality chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Section 5.9, the Municipality shall have no obligation under this Section 5.9 to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

(i) Duties, Immunities and Liabilities of Trustee and Dissemination Agent. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Section 5.9, and the Municipality agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees and expenses) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Municipality under this Section shall survive resignation or removal of the Dissemination Agent and payment of this Loan Agreement. The Dissemination Agent shall have the same rights and protections as afforded to it in its role as trustee under the Trust Agreement.

(j) Notices. Any notices or communications to or among any of the parties to this Section 5.9 may be given at their addresses as set forth in the Trust Agreement and this Loan Agreement.

(k) Beneficiaries. This Section 5.9 shall inure solely to the benefit of the Municipality, the Authority, the Trustee, the Dissemination Agent, the Participating Underwriters, Beneficial Owners and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 5.10 Eminent Domain Proceeds.** If all or any part of the System shall be taken by eminent domain proceedings, the Net Proceeds realized by the Municipality therefrom shall be deposited by the Municipality with the Trustee in a special fund which the Trustee shall establish as needed in trust and applied by the Municipality to the cost of acquiring and constructing additions, betterments, extensions or improvements to the System if (A) the Municipality first secures and files with the Trustee a Certificate of the Municipality showing (i) the loss in annual System Revenues, if any, suffered, or to be suffered, by the Municipality by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the System then proposed to be acquired and constructed by the Municipality from such proceeds, and (iii) an estimate of the additional System Revenues to be derived from such additions, betterments, extensions or improvements; and (B) the Trustee has been furnished a Certificate of the Municipality, certifying that such additional System Revenues will sufficiently offset on a timely basis the loss of System Revenues resulting from such eminent domain proceedings so that the ability of the Municipality to pay Repayment Installments when due will not be substantially impaired, and such Certificate of the Municipality shall be final and conclusive, and any balance of such proceeds not required by the Municipality for such purpose shall be deposited in the Income Fund and applied as provided in Section 4.2 hereof, *provided*, that if the foregoing conditions are not met, then such proceeds shall be deposited with the Trustee and applied to make Repayment Installments as they come due and Parity Obligation Payments as they shall become due; *provided further* that the foregoing procedures for the application of Net Proceeds shall be subject to any similar provisions for Parity Debt on a pro rata basis.

If such eminent domain proceedings have had no effect, or at most an immaterial effect, upon the System Revenues and the security of the Repayment Installments, and a Certificate of the Municipality to such effect has been filed with the Trustee, then the Municipality shall forthwith deposit such proceeds in the Income Fund, to be applied as provided in Section 4.2 hereof.

**Section 5.11 Amounts of Rates, Fees and Charges.**

(a) The Municipality will, at all times while any of the Repayment Installments remain unpaid, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:

(i) All current Operation and Maintenance Costs.

(ii) The Repayment Installments and the payments for the other Parity Debt and the payment of the Subordinate Obligations as they become due and payable.

(iii) All payments required for compliance with the terms hereof.

(iv) All payments to meet any other obligations of the Municipality which are charges, liens or encumbrances upon, or payable from, the System Net Revenues.

(b) In addition to the requirements of the foregoing subsection (a) of this Section, the Municipality will, at all times while any Repayment Installments remain unpaid, to the maximum extent permitted by law, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year, plus any credits from the Rate Stabilization Account in accordance with Sections 4.5 and 4.6 hereof, so as to yield System Net Revenues during such Fiscal Year equal to at least 125% of the Annual Debt Service in such Fiscal Year. If the Municipality is unable to meet this requirement, it will retain a Consulting Engineer to provide recommendations or adjustments to rates or modifications to operations to produce the necessary amount of system net revenues specified above in this Section 5.11(b) of this Loan Agreement.

(c) If Municipality shall fail to comply with Section 5.11(a) or (b) above and is unable to bring itself into compliance within 60 days thereafter, it shall immediately notify the Authority and the Trustee.

The Municipality may make or permit to be made adjustments from time to time in such rates, fees and charges and may make or permit to be made such classification thereof as it deems necessary, but shall not reduce or permit to be reduced such rates, fees and charges below those then in effect unless the System Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this Section.

**Section 5.12 Enforcement of and Performance Under Contracts.** The Municipality shall enforce all material provisions of any contracts to which it is a party, an assignee, successor in interest to a party or third-party beneficiary, in any case where such contracts provide for material payments or services to be rendered to the System. Further, the Municipality will comply with, keep, observe and perform all material agreements, conditions, covenants and terms, express or implied, required to be performed by it, contained in all contracts affecting or involving the System, to the extent that the Municipality is a party thereto.

**Section 5.13 Collection of Charges, Fees and Rates.** The Municipality will have in effect at all times rules and regulations requiring each user of the System to pay the applicable charges, fees and rates and providing for the billing thereof and for a due date

and a delinquency date for each bill. In each case where such bill remains unpaid in whole or in part after it becomes delinquent, the Municipality will enforce the collection procedures contained in such rules and regulations.

**Section 5.14 No Free Service.** The Municipality will not permit any part of the System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, charitable organization, or by any public agency (including the State of Idaho and any Municipality, county, public agency, political subdivision, public corporation or agency or any thereof), unless otherwise required by law or existing written agreements.

**Section 5.15 Payment of Claims.** The Municipality will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the System or upon the System Net Revenues or any part thereof, or upon any funds held by the Trustee, or which might impair the security of the Repayment Installments; *provided*, that nothing herein contained shall require the Municipality to make any such payments so long as the Municipality in good faith shall contest the validity of any such claims and such nonpayment will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

**Section 5.16 Books of Record and Accounts; Financial Statements.** The Municipality will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the System and the Income Fund, and upon request will provide information concerning such books of record and accounts to the Trustee.

The Municipality will prepare annually, not later than one hundred eighty (180) days after the close of each Fiscal Year, so long as any Repayment Installments remain unpaid, an audited financial statement of the Municipality relating to the Income Fund and all other accounts or funds established pursuant hereto for the preceding Fiscal Year prepared by an Independent Certified Public Accountant, showing the balances in each such account or fund as of the beginning of such Fiscal Year and all deposits in and withdrawals from each such account or fund during such Fiscal Year and the balances in each such account or fund as of the end of such Fiscal Year, which audited financial statement shall include a statement as to the manner and extent to which the Municipality has complied with the provisions hereof. Failure to furnish said audited financial statements within said time may subject the Municipality to late charges by the Authority. The Municipality will furnish a copy of such audited financial statement to the Trustee upon request, and will furnish such reasonable number of copies thereof to investment bankers, security dealers and others interested in the Bonds.

**Section 5.17 Payment of Taxes and Other Charges and Compliance With Governmental Regulations.** The Municipality will pay and discharge all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the System or any properties owned by the Municipality, or upon the System Revenues, when the same shall become due; *provided*, that nothing herein

contained shall require the Municipality to make any such payments so long as the Municipality in good faith shall contest the validity of any such taxes, service charges, assessments or other governmental charges and such nonpayment will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

The Municipality will duly comply with all applicable State, federal and local statutes and all valid regulations and requirements of any governmental authority relative to the operation of the System or any part thereof, but the Municipality shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith and such noncompliance will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

**Section 5.18 Maintenance of Insurance.** The Municipality agrees to maintain fire and extended coverage insurance on the System in such minimum amounts as are reasonable and prevalent for similar municipalities and systems in the State of Idaho and worker's compensation coverage on all full-time employees working on, in, near or about the System in accordance with applicable State laws. The Municipality may self-insure against such risks. The Municipality shall provide evidence of such insurance to the Authority or the Trustee, respectively, upon written request of either the Authority or the Trustee.

**Section 5.19 Delivery of Closing Documents.** The Municipality agrees to execute and deliver on the Closing Date the certificates attached hereto as Exhibit C.

**Section 5.20 Authority Fees.** The Municipality is paying to the Authority an Application Fee of \$500.00 which may be credited against the Authority Fee. The Municipality shall pay to the Authority the Authority Fee at the closing of the Loan and Annual Expense Charges each year.

## ARTICLE VI - EVENTS OF DEFAULT AND REMEDIES

**Section 6.1 Events of Default.** Any one of the following which occurs and continues shall constitute an Event of Default pursuant to this Loan Agreement:

- (a) failure by the Municipality to transmit to the Trustee any Repayment Installment by the 15th day prior to the respective Repayment Installment Date; or
- (b) failure of the Municipality to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Loan Agreement, other than making the payments referred to in (a) above, which continues for a period of 60 days after written notice, which notice shall specify such failure and request that it be remedied, given to the Municipality by the Authority or the Trustee, unless the Authority and the Trustee (at the direction of the Authority) shall agree in writing to an extension of such time; provided, however, that if the failure stated in the notice cannot be corrected within such

period, the Authority and the Trustee (at the direction of the Authority) will not unreasonably withhold their consent to an extension of such time if corrective action is instituted within such period and diligently pursued until the default is corrected.

The provisions of subsection (b) of this Section are subject to the limitation that the Municipality shall not be deemed in default if and so long as the Municipality is unable to carry out its agreements hereunder by reason of strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State of Idaho or any of their departments, agencies, or officials, or any civil or military authority; insurrections, riots, epidemics, landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Municipality; it being agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Municipality, and the Municipality shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Municipality, unfavorable to the Municipality. This limitation shall not apply to any default under subsection (a) of this Section.

**Section 6.2 Remedies On Default.** Whenever any Event of Default shall have occurred and shall continue, the following remedies may be pursued with respect to the Trustee, subject to its rights and protections under the Trust Agreement:

- (a) The Trustee shall have access to and the right to inspect, examine and make copies of the books and records and any and all accounts and data of the Municipality.
- (b) The Authority or the Trustee may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Municipality under this Loan Agreement including without limitation taking the actions under Section 3.6 hereof.

In case the Trustee or the Authority shall have proceeded to enforce its rights under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Authority, then, and in every such case, the Municipality, the Trustee and the Authority shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Municipality, the Trustee and the Authority shall continue as though no such action had been taken (provided, however, that any settlement

of such proceedings duly entered into by the Authority, the Trustee or the Municipality shall not be disturbed by reason of this provision).

In case the Municipality shall fail forthwith to pay amounts due by reason of this Section 6.2 upon demand of the Trustee, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Municipality and collect in the manner provided by law the moneys adjudged or decreed to be payable.

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Municipality under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Municipality or in the case of any other similar judicial proceedings relative to the Municipality, or the creditors or property of the Municipality, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Municipality, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Trust Agreement after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

**Section 6.3 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Municipality should default under any of the provisions of this Loan Agreement and the Authority or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Municipality herein contained, the Municipality agrees to pay to the Authority or the Trustee the reasonable fees and expenses of such attorneys and such other expenses so incurred by the Authority or the Trustee.

**Section 6.4 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other

than such notice as may be herein expressly required. Such rights and remedies as are given the Authority hereunder shall also extend to the Trustee, and the Trustee and the holders of the Bonds shall be deemed third party beneficiaries of all covenants and agreements herein contained.

**Section 6.5 No Additional Waiver Implied by One Waiver.** In the event any agreement or covenant contained in this Loan Agreement should be breached by the Municipality and thereafter waived by the Authority or the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 6.6 No Cross Default.** The Municipality shall not be liable for the failure of any other municipality to make payments with respect to the Bonds. The occurrence of any Event of Default of any other municipality under such municipality's loan agreement shall not constitute an Event of Default of the Municipality under this Loan Agreement.

## ARTICLE VII - PREPAYMENT

**Section 7.1 Redemption of Bonds with Prepayment Moneys.** By virtue of the assignment of certain of the rights of the Authority under this Loan Agreement to the Trustee as is provided in Section 3.4 hereof, the Municipality agrees to and shall pay directly to the Trustee any amount permitted or required to be paid by it under this Article VII. The Trustee shall use the moneys so paid to it by the Municipality to effect redemption of the Bonds as set forth in this Article on the date specified for such redemption. The principal component of the Repayment Installments to be prepaid shall correspond in amount and maturity date to the Bonds related to this Loan Agreement.

**Section 7.2 Option to Prepay Installments.** The Repayment Installments specified in Schedule 1 attached hereto are subject to prepayment at the option of the Municipality on the dates and in the amounts as set forth in Schedule 1 which shall be consistent with the terms for redemption of the Authority Bonds.

**Section 7.3 Amount of Prepayment.** In the case of a prepayment, of the entire amount due hereunder pursuant to Section 7.2 hereof, the amount to be paid shall be a sum sufficient, together with other funds and (as such sufficiency is evidenced by a verification report of an Independent Certified Public Accountant) the yield on any securities deposited with the Trustee and available for such purpose, to pay all Repayment Installments thereafter due. In any event, any prepayment of Repayment Installments shall include sufficient funds to pay all principal, accrued interest, premium, if any, and other costs related to the redemption of the Authority's Bonds to be redeemed as a result of such prepayment.

**Section 7.4 Notice of Prepayment.** The Municipality shall give sixty days' prior written notice to the Authority and the Trustee specifying the date upon which any prepayment pursuant to this Article VII will be made. The Authority and the Trustee,

at the request of the Municipality, shall forthwith take all steps necessary under the applicable provisions of the Trust Agreement (except that the Authority shall not be required to make payment of any money required for such redemption) to effect redemption of the part of the then outstanding Bonds related to this Loan Agreement, as the case may be, on the earliest practicable date thereafter, on or after the proposed prepayment date, on which such redemption may be made under applicable provisions of the Trust Agreement.

Notwithstanding anything to the contrary in this Loan Agreement, each notice contemplated in this Section 7.4 that is given with respect to an optional prepayment pursuant to Section 7.2 hereof may state that it is subject to and conditional upon receipt by the Trustee on or prior to the proposed prepayment date of amounts sufficient to effect such prepayment and, if a notice so states, such notice shall be of no force and effect and the prepayment need not be made and the Repayment Installments will not become due and payable on the proposed prepayment date unless such amounts are so received on or prior to the proposed prepayment date.

## **ARTICLE VIII - DISCHARGE OF OBLIGATIONS**

### **Section 8.1 Discharge and Defeasance of Obligations.**

- (a) The Repayment Installments shall be discharged to the extent the Bonds are discharged under the Trust Agreement. The principal components of the Repayment Installments to be discharged shall correspond in amount and maturity date to the Bonds related to this Loan Agreement.
- (b) If the Municipality shall pay or cause to be paid or there shall otherwise be paid to the Trustee all of the Repayment Installments at the times and in the manner stipulated herein, and the Municipality shall pay in full all other amounts due hereunder, then all agreements, covenants and other obligations of the Municipality hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the Municipality all such instruments as may be necessary or desirable and prepared by or on behalf of the Municipality to evidence such discharge and satisfaction.
- (c) Any Repayment Installments shall prior to the Repayment Installment Date or prepayment date thereof be deemed to have been paid within the meaning of and with the effect expressed in subsection (b) of this Section if (1) in case any of such Repayment Installments are to be prepaid, the Municipality shall have given to the Authority and Trustee in form satisfactory to it irrevocable instructions to provide notice in accordance with this Loan Agreement, (2) there shall have been deposited with the Trustee (A) money in an amount which shall be sufficient and/or (B) Government Securities, the interest on and principal of which when paid will provide money which, together with the money, if any,

deposited with the Trustee at the same time, shall be sufficient, in the opinion of an Independent Certified Public Accountant, to transmit and pay when due the Repayment Installments on and prior to the Repayment Installment Dates or prepayment date thereof, as the case may be, and the prepayment premiums, if any, on such Repayment Installments, and (3) an Opinion of Counsel to the effect that such treatment will not adversely affect the tax-exempt status of interest on any Bonds hereunder, provided that this Agreement shall not be discharged and satisfied until all Repayment Installments have been paid or are deemed to have been paid as provided above.

## **ARTICLE IX - NON-LIABILITY OF AUTHORITY; EXPENSES; INDEMNIFICATION**

**Section 9.1 Non-Liability of Authority.** The Authority shall not be obligated to pay the principal of, or premium, if any, or interest on the Bonds, or to discharge any other financial liability (including but not limited to financial liability under Section 5.7 hereof) in connection herewith, except from, and to the extent of, payments made by the Municipality under this Loan Agreement, or through the State intercept provided under Section 3.6 of this Loan Agreement and Section 67-8727, Idaho Code, as amended. The Municipality hereby acknowledges that the Authority's sole source of moneys to repay the Bonds will be provided by the payments made by the Municipality pursuant to this Loan Agreement (excluding payments to the Authority or the Trustee pursuant to Section 5.7 and 9.3 of this Loan Agreement) and payments from other participating Municipalities and the State intercept provided under Section 67-8727, Idaho Code, as amended.

**Section 9.2 Liability of Municipality Limited to System Revenues and Other Funds.** The Municipality shall not be required to advance any moneys derived from any source of income other than the System Revenues, the Income Fund and the other funds provided herein for the payment of the Repayment Installments or for the performance of any agreements or covenants required to be performed by it contained herein. The Municipality may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the Municipality for such purpose.

The obligation of the Municipality to make the Repayment Installments is a special obligation of the Municipality payable solely from the System Net Revenues and the other legally available funds provided for herein (except as provided in Section 3.6 or elsewhere herein), and does not constitute a debt of the Municipality or of the State of Idaho or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

**Section 9.3 Indemnification.** The Municipality releases the Authority and the Trustee from, and covenants and agrees that neither the Authority nor the Trustee shall be liable for, and covenants and agrees, to the extent permitted by law, to indemnify, defend and

hold harmless the Authority and the Trustee and their officers, directors, elected officials, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the Project or any part thereof.

## ARTICLE X - MISCELLANEOUS

**Section 10.1 Notices.** All notices, certificates or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by first class mail, postage prepaid, addressed to the Authority, the Municipality or the Trustee, as the case may be. Notices for the Municipality shall be sent to the address specified in Schedule 1 attached hereto. Notices for the Authority and the Trustee shall be sent to the addresses set forth in the Trust Agreement. A duplicate copy of each notice, certificate or other communication given hereunder by either the Authority or the Municipality to the other shall also be given to the Trustee. The Authority, the Municipality and the Trustee may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 10.2 Severability.** If any provision of this Loan Agreement shall be held or deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

**Section 10.3 Execution of Counterparts.** This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.4 Amendments, Changes and Modifications.** Subsequent to the initial issuance of Bonds and prior to their payment in full, or provision for such payment having been made as provided in the Trust Agreement, this Loan Agreement may be amended, changed or modified as set forth in Article X of the Trust Agreement.

**Section 10.5 Governing Law.** This Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Idaho.

**Section 10.6 Authorized Municipality Representative.** Whenever under the provisions of this Loan Agreement the approval of the Municipality is required or the Authority or the Trustee is required to take some action at the request of the Municipality, such approval or such request shall be given on behalf of the Municipality by an Authorized Municipality Representative, and the Authority and the Trustee shall be

authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken.

**Section 10.7 Term of the Loan Agreement.** This Loan Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Municipal Bond is outstanding; provided, however, that the rights of the Trustee and the Authority under Section 9.3 hereof shall survive the termination of this Loan Agreement, the retirement of the Bonds and the removal or resignation of the Trustee. All representations and certifications by the Municipality as to all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Loan Agreement.

**Section 10.8 Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority, the Municipality, the Trustee and their respective successors and assigns.

**Section 10.9. Post Issuance Tax Compliance Procedures of the Authority.** The parties hereto both acknowledge the Post Issuance Tax Compliance Procedures of the Authority attached hereto as Exhibit F and agree that they will follow and comply with said procedures.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of Twin Falls, Idaho has caused this Loan Agreement to be executed in its name and its seal to be hereunto affixed by its duly authorized officers, and the Idaho Bond Bank Authority has caused this Loan Agreement to be executed in its name and attested by its duly authorized officers, all as of the date first above written.

**CITY OF TWIN FALLS, IDAHO**

By \_\_\_\_\_  
Mayor

[SEAL]

Attest:

\_\_\_\_\_  
City Clerk

**IDAHO BOND BANK AUTHORITY**

By \_\_\_\_\_  
\_\_\_\_\_  
Executive Director

SCHEDULE 1: CITY OF TWIN FALLS

Prior Note Date:	December 18, 2002.
Prior Note Par Amount:	\$8,359,276.14.
Municipal Bond Purchase Price:	Par amount of \$ _____ plus a premium of \$ _____ less Underwriter Discount of \$\$ _____, for a net purchase price of \$\$ _____.
Repayment Amount:	\$ _____ plus interest.
Prior Obligations:	Prior Note (to be refunded), Certificates of Participation, Issued on August 1, 1999, in the original principal amount of \$3,910,000.
Prepayment Provisions:	The Repayment Installments coming due on or prior to September 15, 2022, are not subject to prepayment. The Repayment Installments coming due on and after September 15, 2023, are subject to prepayment, at the written direction of the Municipality and with the consent of the Authority, from any moneys deposited with the Trustee, as a whole or in part on any date on or after September 15, 2022, among such payment dates as designated by the Authority to the Trustee, at the price of par, plus accrued interest, if any, to the date of prepayment.
Municipality address:	321 Second Ave. E. Twin Falls, ID 83301
Disbursement of Loan:	<ol style="list-style-type: none"> <li>1. \$ _____ to the Department of Environmental Quality to pay off the Prior Note.</li> <li>2. \$ _____ to Municipality to deposit in its Construction Fund (Capitol Improvement Fund) for the Municipal Bond.</li> <li>3. \$ _____ to the Series 2012C Cost of Issuance Account held by the Trustee under the Trust Agreement to pay various costs of issuance on the Series 2012C Bonds..</li> <li>4. \$\$ _____ representing the Authority Fee shall be paid to the Authority from the Series 2012C Cost of Issuance Account.</li> <li>5. \$ _____ to the Bond Counsel of the Municipality and \$ _____ to the financial advisor of the Municipality and \$ _____ to Trustee all as costs of issuance on its Municipal Bond.</li> <li>6. To the Municipality, \$ _____, as a rounding amount.</li> </ol>
Reserve Fund:	Funded subsequent to closing of the Loan as provided in Section 4.4.

## EXHIBIT A

### **Description of the Project**

The New Project consists of the issuance of the Municipality's Sewer Revenue Refunding Bond, Series 2012, in the principal amount of \$\_\_\_\_\_.00, for the purpose of financing all or a portion of the costs of design and construction of various improvements, for the sewer system of the City of Twin Falls, Idaho.

The Refunding Project consists of the issuance of the Municipality's Sewer Revenue Refunding Bond, Series 2012, in the principal amount of \$\_\_\_\_\_, for the purpose of refunding the Municipality's outstanding certain Prior Note which originally financed all or a portion of the costs of design and construction of various improvements, for the sewer system of the City of Twin Falls, Idaho.

EXHIBIT B  
**Repayment Installments and Repayment Installment Dates**

SERIES 2012C

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Total P+I</b>	<b>Fiscal Total</b>
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**(to come)**

Note: \*\* Payments must be transmitted to the Trustee 15 days prior to the payment dates listed.

## EXHIBIT C

### **Municipality Closing Documents**

- a. Bond Ordinance authorizing the Municipal Bond, and execution of the Loan Agreement.
- b. Loan Agreement, dated as of October 1, 2012 between the Municipality and the Authority.
- c. Bond of the Municipality.
- d. Loan Application.
- e. Rule 15c2-12 Certificate.
- f. Opinion of Bond Counsel.
- g. Tax Certificate of Municipality.
- h. General Certificate.
- i. Signature and No Litigation Certificate.
- j. Receipt for Bond.
- k. IRS Form 8038-G.
- l. Receipt for Proceeds of Bond.
- m. Cash Flows.
- n. Certificate of Investigation.
- o. Disclosure Certificate.
- p. Written Certificate and Request to Trustee.

EXHIBIT D1

**Certificate Regarding Annual Financial Information**

The undersigned on behalf of the City of Twin Falls, Idaho (the "Municipality") hereby certifies in connection with the Loan Agreement dated as of October 1, 2012 between the Municipality and the Idaho Bond Bank Authority (the "Authority") that:

1. The attached financial statements are the true and correct audited financial statements of the Municipality for the Municipality's fiscal year ended September 30, \_\_\_\_ (the "Prior Fiscal Year").
2. Unless already stated in the attached financial statements, the debt, and the amount of debt, outstanding against the water system of the Municipality (including any debt to the Authority), as of the end of the Prior Fiscal Year, is as follows:

\_\_\_\_\_  
(Attach separate sheet if needed)

3. Except as stated below or on a separate attached sheet, there is not now, and has not been during the Prior Fiscal Year: (1) any default on the Loan Agreement or other debt of the Municipality; (2) any litigation filed against the Municipality challenging the validity of the Loan Agreement; (3) any citations of non-compliance by any regulatory authority with respect to the System; or (4) failure to comply with the System rates and charges requirement of Section 5.11 of the Loan Agreement, taking into account any transfers from the Rate Stabilization Account:

\_\_\_\_\_. (Attach separate sheet if needed)

4. There are, and have been during the Prior Fiscal Year, no material "Listed Events," as referenced in Section 5.9(d) of the Loan Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF TWIN FALLS, IDAHO

By \_\_\_\_\_  
Its: \_\_\_\_\_  
(Treasurer or Finance Director)

EXHIBIT D2

**Notice to Repository of Failure to File Annual Report**

Name of Municipality: City of Twin Falls, Idaho

Name of Bond Issue: Idaho Bond Bank Authority Revenue Bonds, Series 2012C

Date of Issuance: October 11, 2012

NOTICE IS HEREBY GIVEN that the City of Twin Falls, Idaho has not provided an Annual Report with respect to the above-named Bonds as required by Section 5.9 of the Loan Agreement dated as of October 1, 2012, between the Municipality and the Idaho Bond Bank Authority. [The Municipality anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

\_\_\_\_\_  
On behalf of the City of Twin Falls,  
Idaho

cc: City of Twin Falls, Idaho

EXHIBIT E

**Fees charged by Authority for failure to comply with  
Continuing Disclosure Requirements**

Continuing Disclosure Late Fee Scale

Due date – 3 months after:	Lesser of \$7,500 or 0.50% of issued amount
3 – 6 months after due date:	Lesser of \$500 or 0.20% of issued amount
6 months – 9 months after due date:	Lesser of \$500 or 0.20% of issued amount
9 months – 1 year after due date:	Lesser of \$500 or 0.20% of issued amount
Every 3 months after 1 year:	Lesser of \$500 or 0.20% of issued amount

This scale will pertain to every outstanding borrowing of the Municipality from the Idaho Bond Bank Authority.

EXHIBIT F

**Post Issuance Tax Compliance Procedures  
(attached)**

**Idaho Bond Bank Authority**  
**Post-Issuance Tax Compliance Procedures**  
**For Tax-Exempt Bonds**

February 13, 2012

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds ("Bonds") issued by the Idaho Bond Bank Authority (the "Authority") so as to ensure that the Authority complies with all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds. The Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Authority also reserves the right to change these policies and procedures from time to time.

General

Inasmuch as the Authority is a responsible conduit issuer authorizing the issuance of Bonds for eligible borrowers (each, a "Borrower"), the Authority now identifies post-issuance tax compliance procedures for all Bonds issued by the Authority for Borrowers, as well as the Authority's expectations of and requirements for all Borrowers concerning these procedures. For tax-exempt bonds issued by the Authority, each loan ("Loan") to each Borrower will be a tax-exempt obligation, as evidenced by an unqualified opinion of bond counsel to each Borrower. Ultimate responsibility for all matters relating to Authority financings and refinancings rests with the Authority Executive Director (the "Executive Director"). Ultimate responsibility for all matters relating to Loans rests with the corresponding officer at each Borrower.

Post-Issuance Compliance Requirements

External Advisors / Documentation

The Executive Director and other appropriate Authority personnel and the corresponding personnel of each Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for the appropriate tax status. Those requirements and procedures shall be documented in an Authority and Borrower resolutions, Tax Certificates and / or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds or the Loan, as appropriate.

The Executive Director and other appropriate Authority personnel and the corresponding personnel of each Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed assets and future contracts with respect to the use of output or throughput of Bond- financed assets.

Whenever necessary or appropriate, the Authority shall engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds.

#### Role of the Authority as Bond Issuer

Unless otherwise provided by Authority resolutions, unexpended Bond proceeds shall be held by the Authority, and the investment of Bond proceeds shall be managed by the Executive Director. The Executive Director shall maintain records regarding the investments and transactions involving Bond proceeds held by the Authority or the Trustee for the bonds. Funds transferred to the Borrower shall constitute expending Bond proceeds for the purposes of the Authority. Any investment of funds by the Borrower or Borrower's Trustee is the responsibility of the Borrower. As such, all record retention and other responsibilities associated with Borrower proceeds is the sole responsibility of the Borrower.

If an Authority resolution provides for Bond proceeds to be administered by a trustee, the trustee shall provide regular, periodic (monthly) statements regarding the investments and transactions involving Bond proceeds.

#### Arbitrage Rebate and Yield

The Authority will loan out all proceeds to underlying Borrowers at issue. As such, the requirement for arbitrage rebate and yield calculations will not be applicable.

The Authority will consult annually with bond counsel and tax counsel to confirm the applicability of arbitrage rebate and yield calculations. If at any time it is determined that these requirements are applicable, the Authority shall do the following:

- the Authority shall engage the services of a Rebate Service Provider, and the Authority or the Bond trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;
- upon request, the Executive Director and other appropriate Authority personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

- the Executive Director and other appropriate Authority personnel shall monitor efforts of the Rebate Service Provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and
- during the construction period of each capital project financed in whole or in part by Bonds, the Executive Director and other appropriate Authority personnel shall monitor the investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds.

For working capital financings, if any, the Authority shall follow procedures set forth in the applicable Tax Certificate and/or instructions delivered at bond or note closing.

The Authority shall retain copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements".

#### Use of Bond Proceeds

Except for the obligation of the Authority to maintain records regarding the Loans made for Bond proceeds, it is the Authority's policy that the Borrower shall be responsible for:

- monitoring the use of Loan proceeds and the use of Loan-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of Loan-financed assets throughout the term of the Loan (and in some cases beyond the term of the Loan) to ensure compliance with covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;
- maintaining records identifying the Loan and the assets or portion of assets that are financed or refinanced with proceeds of each Loan;
- consulting with Bond Counsel and other professional expert advisers in the review of the Loan and any contracts or arrangements involving use of Loan-financed facilities to ensure compliance with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;
- maintaining records regarding the Loan and for any contracts or arrangements involving the use of Loan-financed facilities as might be necessary or appropriate to

document compliance with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;

- meeting or conferring at least annually with personnel responsible for the Loans and Loan-financed assets to identify and discuss any existing or planned use of Loan-financed, assets or output or throughput of Loan-financed assets, to ensure that the Loan and those uses are consistent with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates.

- taking timely remedial actions under section 1.141-12 of the Treasury Regulations (or other remedial actions authorized by the Commissioner of the IRS under Section 1.141-12(h) of the Regulations) to prevent from being considered "deliberate actions" any actions of the Borrower which cause the conditions of the private business tests or the private loan financing test to be met resulting in the Loan becoming a private activity bond.

All relevant records and contracts shall be maintained as described below and in the applicable Tax Certificate. The Borrower, in the Tax Certificate relating to the Loan and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above.

#### Investment of Bond Proceeds

Investment of bond proceeds maintained by the Authority shall remain in compliance with the arbitrage bond rules and rebate of arbitrage as supervised by the Executive Director.

- Guaranteed investment contracts ("GIC") will be purchased only using the three-bid "safe harbor" of applicable Treasury regulations, in compliance with fee limitations on GIC brokers in the regulations.
- Other investments will be purchased only in market transactions.
- Calculations of rebate liability will be performed annually by outside consultants.
- Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the issuer.
- Identify date for first rebate payment at time of issuance. Enter in records for the issue.

The investment of all proceeds received by the Borrower is the responsibility of the Borrower to supervise and maintain compliance with the arbitrage bond rules and rebate of arbitrage.

#### Record Keeping Requirements

Unless otherwise specified in applicable Authority resolutions or Tax Certificates, the Authority shall maintain the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Authority at or in connection with closing of the issue of Bonds; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.

Unless otherwise specified in applicable Authority resolutions or Tax Certificates, it is the Authority's policy that the Borrower shall be responsible for maintaining the following documents for the term of each Loan (including refunding obligations, if any) plus at least three years:

- a copy of all material documents relating to capital expenditures financed or refinanced by Loan proceeds, including (without limitation) loan documents for the Authority's pooled loans to municipalities and construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Loan proceeds and records identifying the assets or portion of assets that are financed or refinanced with Loan proceeds;
- a copy of all contracts and arrangements involving private use of Loan-financed assets or for the private use of output or throughput of Loan-financed assets; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.

The Borrower, in the Tax Certificate relating to the Loan and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for retaining the records listed above.

**EXHIBIT C**

**Refunding Form  
Revenue Bonds, Intercept - Water**

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**LOAN AGREEMENT**

**Between**

**IDAHO BOND BANK AUTHORITY**

**And**

**CITY OF TWIN FALLS, IDAHO**

**Dated as of October 1, 2012**

**Relating to**

**Idaho Bond Bank Authority  
Revenue Bonds  
Series 2012C**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of October 1, 2012, by and between the CITY OF TWIN FALLS, IDAHO, a municipal corporation duly organized, existing and operating under the laws and Constitution of the State of Idaho and thereby a "Municipality" under the "Act" as defined below (the "Municipality"), and IDAHO BOND BANK AUTHORITY, an independent public body corporate and politic (the "Authority"),

### WITNESSETH:

WHEREAS, pursuant to the Idaho Code, Title 50, Chapter 10, on June 1, 2002, the Municipality has previously issued its Department of Environmental Quality Note Series 2002, (the "Prior Note") to finance improvements to its water system and the Municipality intends to issue its Water Revenue Refunding Bond, Series 2012 (the "2012 Bond") for the purpose of currently refunding the Prior Note and refinancing certain water facilities, the "Project");

WHEREAS, the Idaho Bond Bank Authority (the "Authority") is an independent public body corporate and politic duly created and operating pursuant to Idaho Code, Title 67, Chapter 87 as amended or supplemented from time to time (the "Act");

WHEREAS, the Act authorizes and empowers the Authority to issue bonds for the purpose of purchasing municipal bonds, including loans undertaken by municipalities for any purpose authorized by law;

WHEREAS, the Authority intends to issue Idaho Bond Bank Authority Revenue Bonds, Series 2012C (the "Bonds");

WHEREAS, pursuant to Ordinance No. 3037 adopted on September 10, 2012 (the "Ordinance"), the Municipality approved this Loan Agreement by and between the Municipality and the Authority (the "Loan Agreement"), in which the proceeds of the Loan shall be used to repay the Prior Note,; and

NOW, THEREFORE, in consideration of the premises and the respective representations and covenants herein contained, the parties hereto agree as follows:

### ARTICLE 1 – DEFINITIONS

**Section 1.1 Definition of Terms.** Unless the context otherwise requires, the capitalized terms used in this Loan Agreement not otherwise defined herein shall have the meanings specified in Section 1.01 of the Master Trust Agreement, dated as of December 1, 2004 between the Authority and U.S. Bank National Association, as trustee (which has now been succeeded by Bank of New York Mellon Trust Company, N.A., as amended relating

to the Bonds (the "Master Trust Agreement"), and all supplemental trust agreements including the Eighteenth Supplemental Trust Agreement dated as of October 1, 2012 (the "Eighteenth Supplemental Trust Agreement") by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), as previously supplemented and amended or as it may from time to time be supplemented or amended as provided therein with the Master Trust Agreement and all Supplemental Trust Agreements including the Seventeenth Supplemental Trust Agreement referred to herein collectively as the "Trust Agreement."

"Annual Debt Service" means, for any Fiscal Year, the sum of (1) the interest accruing on all Parity Debt during such Fiscal Year, assuming that all Parity Debt is retired as scheduled, plus (2) the principal amount (including principal due as sinking fund installment payments) allocable to all Parity Debt in such Fiscal Year, calculated as if such principal amounts were deemed to accrue daily during such Fiscal Year in equal amounts from, in each case, each payment date for principal or the date of delivery of such Parity Debt (provided that principal shall not be deemed to accrue for greater than a 365-day period prior to any payment date), as the case may be, to the next succeeding payment date for principal.

"Annual Expense Charges" means the annual charges for Trustee fees, continuing disclosure dissemination agent fees, audit fees, rebate calculation expenses or other expenses related to the Bonds or Loan and paid by the Authority which shall be reimbursed to the Authority by the Municipality as provided in Section 3.2(a) hereof upon receipt of invoice from the Authority or Trustee as well as any late fees or charges related to continuing disclosure or audit submission.

"Authority Fee" means the one-time fee payable by the Municipality to the Authority upon issuance and delivery of the Bonds in the amount set forth in Schedule 1 equal to 1/10 of one percent (.10%) of the total debt service to be paid on the Loan. The amount of any application fee previously paid by the Municipality to the Authority may be credited against the Authority Fee.

"Authorized Municipality Representative" means the Mayor or Municipality Clerk, or any such officer's designee, or any other officer of the Municipality duly authorized by the Municipality.

"Bond Ordinance" means the Bond Ordinance defined in the last WHEREAS Claus above.

"Certificate of the Municipality" means an instrument in writing signed by an Authorized Municipality Representative, such authorization to be evidenced by a certificate verifying the specimen signatures of such officers at the request of the Trustee.

"Consulting Engineer" means any qualified registered or licensed professional engineer practicing under the laws of the State of Idaho selected by the Municipality.

“Fiscal Year” means the fiscal year of the Municipality, beginning October 1 and ending September 30 each year.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Income Fund” means the fund by that name described in Section 4.2 hereof.

“Independent Certified Public Accountant” means any firm of certified public accountants appointed by the Municipality, which is independent of the Municipality and the Authority pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

“Issue Date” means the date of issuance of the Municipal Bond.

“Loan” means the loan of proceeds of the Bonds as described in Section 3.1 hereof.

“Maximum Annual Debt Service” means, as of any date of calculation, the largest Annual Debt Service during the period from the date of such calculation through the final maturity date of all Parity Debt.

“Municipal Bond” or “Municipal Bonds” means the revenue bond or other evidence of indebtedness issued and delivered by the Municipality to evidence the Loan as provided in Section 3.1 hereof.

“Municipality” means the City of Twin Falls, Idaho, a municipal corporation of the State of Idaho and thereby a “Municipality” under the Act.

“Net Proceeds” means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

“Operation and Maintenance Costs” means all reasonable and necessary current expenses of the Municipality, paid or accruing, for operating, maintaining and repairing the System, including legal and overhead expenses of the municipality directly related to the administration of the System, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries, administrative expenses, labor, and the cost of materials and supplies for current operation, but not including depreciation, legal liabilities not based on contract, the cost of improvements to the

System, charges for accumulation of reserves, or payment of Parity Debt or Subordinate Obligations.

“Parity Debt” means the Repayment Installments, any Prior Obligations, and any Parity Obligations.

“Parity Obligation Payments” means the payments scheduled to be paid by the Municipality under and pursuant to the Parity Obligations, which payments are secured by a pledge of System Net Revenues on parity with the Repayment Installments as provided herein.

“Parity Obligations” means all obligations of the Municipality authorized and executed by the Municipality other than the Repayment Installments, with Parity Obligation Payments which are secured by a pledge of the System Net Revenues on parity with the Repayment Installments as provided herein.

"Prior Note" means the Municipality's Department of Environmental Quality Note, Series 2002.

“Prior Obligations” means the obligations, if any, specified in Schedule 1 attached hereto.

“Project” means the refunding of the Prior Note as described in the first WHEREAS clause above to refinance the facilities as described in Exhibit A hereto.

“Rate Stabilization Account” means the Rate Stabilization Account established pursuant to Section 4.5 hereof.

“Repayment Amount” means the amount specified in Schedule 1 attached hereto.

“Repayment Installment” means any amount that the Municipality is required to pay directly to the Trustee pursuant to Section 3.2(a) of this Loan Agreement, as a repayment of the loan made to the Municipality under the Loan Agreement, which amount is determined in accordance with Section 4.2(a) thereof.

“Repayment Installment Date” means the dates corresponding to the Repayment Installments, as set forth in Exhibit B, however, payments must be transmitted to the Trustee at least fifteen (15) days prior to the Repayment Installment Dates on Exhibit B.

“Reserve Fund” means the reserve fund for the Loan in the amount of the Reserve Requirement and to be funded from funds of the Municipality if required as provided in Section 4.4 hereof.

“Reserve Requirement” shall mean the monies to be held by the Municipality in the Reserve Fund to secure payment of debt service on the Loan and the Municipal Bond

which shall be an amount equal to the amounts required under Section 4.4 hereof, provided that said amount shall not exceed the lesser of: (i) 10% of the proceeds of the Loan, (ii) maximum annual principal and interest on the Loan, or (iii) 125% of average annual principal and interest on the Loan Obligation.

“Revenue Fund” means the fund so designated established pursuant to the Trust Agreement and held by the Trustee.

“Subordinate Obligations” means the obligations of the Municipality that are subordinate in payment to the Repayment Installments.

“System” means all of the Municipality’s domestic water system, and its domestic water facilities and properties now owned or hereafter acquired, whether situated within or without Municipality boundaries.

“System Net Revenues” means the remaining System Revenues after deducting Operation and Maintenance Expenses.

“System Revenues” means all gross income and revenue received or receivable by the Municipality from the ownership or operation of the System, determined in accordance with Generally Accepted Accounting Principles, excluding grants, hookup fees and other non recurring revenue, but including without limitation, transfers from the Rate Stabilization Account and including all fees (excluding connection fees), rates, charges and all amounts paid under any contracts received by or owed to the Municipality in connection with the operation of the System and all proceeds of insurance relating to the System and investment income allocable to the System and all other income and revenue howsoever derived by the Municipality from the ownership, or operation of the System or arising from the System.

“Water Revenue Fund” means the Municipality’s Water Revenue Fund, established by the Bond Ordinance.

**Section 1.2 Number and Gender.** The singular form of any word used herein, including the terms defined in Section 1.01 of the Trust Agreement, shall include the plural, and vice versa. The use herein of a word of any gender shall include all genders.

**Section 1.3 Articles, Sections, Etc.** Unless otherwise specified, references to Articles, Sections and other subdivisions of this Loan Agreement are to the designated Articles, Sections and other subdivisions of this Loan Agreement as originally executed. The words “hereof,” “herein,” “hereunder” and words of similar import refer to this Loan Agreement as a whole. The headings or titles of the several articles and sections, and the table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions hereof.

## ARTICLE II – REPRESENTATIONS

**Section 2.1 Representations of The Municipality.** The Municipality makes the following representations as the basis for its undertakings herein contained:

(a) The Municipality is a municipal corporation in the State of Idaho. Under the provisions the Act, the Municipality has the power to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder. By proper action, the Municipality has authorized the Municipal Bond evidencing its obligations under this Loan Agreement in accordance with Title 50, Chapter 10 of the Idaho Code, as amended. By proper action, the Municipality has been duly authorized to execute, deliver and duly perform this Loan Agreement.

(b) The Municipality is not in default under any of the provisions of the laws of the State of Idaho which default would affect its existence or its powers referred to in subsection (a) of this Section 2.1.

(c) The Municipality has found and determined and hereby finds and determines that all requirements of the Act with respect to the execution of this Loan Agreement have been complied with and that financing the Project by entering into this Loan Agreement will be in furtherance of the purposes of the Act.

(d) The Project consists and will consist of the refinancing of the facilities described in Exhibit A hereto and the redemption of the Prior Note. The Municipality shall make no changes to any portion of the Project or to the operation thereof which would impair the exemption from gross income of the interest on the Bonds or the Municipal Bond for federal income tax purposes. In particular, the Municipality shall comply with all requirements of the Tax Certificate, dated the Issue Date (the "Tax Certificate"), which is hereby incorporated by reference herein.

**Section 2.2 Representations of the Authority.** The Authority makes the following representations as the basis for its undertakings herein contained:

(a) The Authority is an independent public body corporate and politic duly formed under the laws of the State of Idaho and has the power to enter into and has duly authorized the execution and delivery of the Trust Agreement, this Loan Agreement and all other documents contemplated hereby to be executed by the Authority.

(b) The execution and delivery of the Bonds, this Loan Agreement, and the Trust Agreement and the consummation of the transactions contemplated hereby and thereby do not conflict with or constitute a breach of or default under the Act or, to the best knowledge of the Authority, under the terms and conditions of any

agreement or commitment to which the Authority is a party or by which the Issuer is bound.

(c) The Authority will issue, execute and deliver the Bonds upon the terms and conditions set forth in the Trust Agreement and will use a portion of proceeds of the issuance of the Bonds for the Loan to finance the Project in accordance with this Loan Agreement.

### **ARTICLE III - LOAN TO MUNICIPALITY; REPAYMENT PROVISIONS**

**Section 3.1 Loan to Municipality;** The Authority covenants and agrees, upon the terms and conditions in this Loan Agreement, to make a Loan of the amount specified in Schedule 1 attached hereto to the Municipality for the purpose of refinancing the facilities comprising Project and refunding the "Prior Note" through payment of Loan proceeds. The Loan is based on the purchase price of the Municipal Bond at the par amount thereof plus a premium or less a discount as described in Schedule 1 hereto. Said Loan shall be disbursed and contributions the Municipality made as described in Schedule 1. Pursuant to said covenant and agreement, the Authority will issue the Bonds upon the same terms and conditions contained in this Loan Agreement and the Trust Agreement and will cause the Bond proceeds to be applied as provided in Article III thereof. The Municipality shall issue and sell its Municipal Bond to the Authority as evidence of its Loan obligation hereunder and the payments due on the Municipal Bond shall equal the Repayment Installments hereunder.

#### **Section 3.2 Repayment and Payment of Other Amounts Payable.**

(a) The Municipality covenants and agrees to pay to the Trustee the Repayment Installments together with the Annual Expense Charges and all other amounts then due hereunder on the Loan to the Municipality pursuant to Section 3.1 hereof, at least fifteen (15) days prior to the Repayment Installment Dates as set forth in Exhibit B hereto. The Trustee shall transmit the Annual Expense Charges to the Authority.

Any amount held by the Trustee in the Revenue Fund on the Municipality's behalf on any Repayment Installment Date hereunder shall be credited against the Repayment Installment due on such date to the extent available for such purpose; and provided further that, subject to the provisions of this paragraph, if at any time the amounts held by the Trustee in the Revenue Fund on the Municipality's behalf are sufficient to pay all of the Repayment Installments, the Municipality shall be relieved of any obligation to make any further payments under the provisions of this Section. Notwithstanding the foregoing, if on any date the amount held by the Trustee in the Revenue Fund on the Municipality's behalf is insufficient to make any required Repayment Installment on any Repayment Installment Date, the Municipality shall forthwith pay such deficiency as a Repayment Installment hereunder.

(b) Upon written request of the Trustee, the Municipality shall pay any Repayment Installment directly to the Trustee.

**Section 3.3 Unconditional Obligation.** The obligations of the Municipality to make the payments required by Section 3.2 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Authority, and during the term of this Loan Agreement, the Municipality shall pay absolutely net the payments to be made on account of the loan as prescribed in Section 3.2 and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off; provided, that the Municipality's obligation to make payments under this Loan Agreement shall be limited to the extent of System Net Revenues and other legally available funds of the Municipality to be appropriated as needed to make the payments required under this Agreement and the Municipal Bond, but is not a general obligation of the Municipality provided that the State Intercept under Section 3.6 hereof shall apply. Until such time as the Repayment Installments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article VIII of this Loan Agreement), the Municipality (i) will not suspend or discontinue any payments provided for in Section 3.2 hereof; (ii) will perform and observe all of its other covenants contained in this Loan Agreement; and (iii) will not terminate this Loan Agreement for any cause, including, without limitation, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Idaho or any political subdivision of either of these, or any failure of the Authority or the Trustee to perform and observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement or the Trust Agreement, except to the extent permitted by this Loan Agreement.

**Section 3.4 Assignment of Authority's Rights.** As security for the payment of the Bonds, the Authority will assign to the Trustee the Authority's rights, but not its obligations, under this Loan Agreement, including the right to receive payments hereunder (except (i) the rights of the Authority to receive notices under this Loan Agreement, (ii) the right of the Authority to receive certain payments, if any, with respect to fees, expenses and indemnification and certain other purposes under Sections this Loan Agreement, and (iii) the right of the Authority to give approvals or consents pursuant to this Loan Agreement) and the Authority hereby directs the Municipality to make the payments required hereunder (except such payments for fees, expenses and indemnification) directly to the Trustee. The Municipality hereby assents to such assignment and agrees to pay the Repayment Installments directly to the Trustee (subject to the provisions of Section 3.2(b)) without defense or set-off by reason of any dispute between the Municipality and the Authority or the Trustee.

**Section 3.5 Amounts Remaining in Funds.** It is agreed by the parties hereto that after payment in full of (i) the Repayment Installments, or after provision for such payment shall have been made as provided in Article XIII, (ii) the fees and expenses of the Authority in accordance with this Loan Agreement, (iii) the fees, charges and expenses of the Trustee, the Registrar and Paying Agent in accordance with the Trust Agreement and this Loan Agreement and (iv) all other amounts required to be paid under this Loan Agreement and the Trust Agreement, any amounts remaining in any fund held by the Trustee under the Trust Agreement shall belong, subject to the requirements of Section 7.03 of the Trust Agreement, to the Authority and be paid to the Authority by the Trustee, provided that any earnings on payments by the Municipality to the Trustee under Section 3.2(a) prior to the Repayment Installment Dates shall be deducted from said remaining amounts and credited to the Municipality.

**Section 3.6 Timeliness Of Payments; Consent to State Intercept; Repayment.**

(a) The Municipality understands that the State intercept and repayment procedures contained in and required by Section 67-8727, Idaho Code, as amended, and as set forth herein operate as a matter of law with respect to the Loan covered by this Loan Agreement without the need for consent thereto by the Municipality. The Municipality also understands that said intercept procedures will provide funds to pay the Authority Bonds (not the Loan obligations).

(b) If the Municipality is unable to transfer all of its Repayment Installment to the Trustee at least 15 days before the Repayment Installment Date, the Municipality shall immediately notify the Trustee, the Authority and the State Treasurer by: (i) telephone; (ii) a writing sent by facsimile transmission; and (iii) a writing sent by first-class United States mail. If sufficient funds are not transferred to the Trustee for the Bonds of the Authority that are secured by this Loan Agreement at least ten (10) days before the scheduled debt service payment date of the Bonds, the Trustee shall transfer any available funds pledged to secure payment of the Bonds in sufficient amounts to make up any shortfall in the amount necessary to pay debt service on the Bonds on the scheduled payment date and deposit such amount in the debt service payment fund for those Bonds.

(c) If, as a result of the failure of the Municipality to make Repayment Installments in a timely manner, the Trustee shall transfer funds pursuant to paragraph (b) of this section to pay debt service on the Bonds or if there are not sufficient funds available pursuant to paragraph (b) of this section to make up for any shortfall in the amount necessary to pay debt service on the Bonds, at least ten (10) days before the scheduled debt service payment date of the Bonds, the Trustee shall notify the Authority and the State Treasurer by: (i) telephone; (ii) a writing sent by facsimile transmission; and (iii) a writing sent by first-class United States mail.

(d) To the extent provided and required by Section 67-8727, Idaho Code, as amended, and upon the notice provided in subsection (c) of this section. The State Treasurer shall (i) immediately intercept to the extent permitted by law any payments available from: (A) the receipts of any payment of property taxes; or (B) sales tax moneys that would be distributed pursuant to section 63-3638, Idaho Code; or (C) liquor tax moneys that would be distributed pursuant to Section 23-404, Idaho Code, as amended; or (D) any other source of operating moneys provided by the State to the Municipality that would otherwise be paid to the Municipality by the State.

(e) If the State has made all or part of a Repayment Installment on behalf of the Municipality from moneys representing sales tax receipts transferred from the State general fund pursuant to Section 67-8716, Idaho Code, the Municipality shall: (a) reimburse all moneys drawn by the State Treasurer on its behalf; (b) pay interest to the State on all moneys paid by the State from the date the moneys are drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus five percent (5%); and (c) pay all penalties required by the Act.

(f) The State Treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the Municipality on the State, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the State to make Repayment Installments.

(g) The State Treasurer may, after considering the circumstances giving rise to the failure of the Municipality to make its Repayment Installments in a timely manner, impose on the Municipality a penalty of not more than five percent (5%) of the amount paid by the State for each instance in which a payment by the State is made.

(h) (i) If the State Treasurer determines that amounts obtained under this section will not reimburse the State in full within one (1) year from the State's payment of the Municipality's scheduled Repayment Installments, the State Treasurer shall, subject to clause (ii) hereof, pursue any legal action, including mandamus, against the Municipality to compel it to take any action required by the Act, including:

(1) To the extent permitted by law provide System Net Revenues or other legally available funds to pay Repayment Installments when due; and

(2) Meet its repayment obligations to the State.

- (ii) In pursuing its rights under paragraph (i) of this subsection (h), the State shall have the same substantive and procedural rights as would a holder of this Loan Agreement.
- (iii) The attorney general shall assist the State Treasurer in these duties.
- (iv) The Municipality shall pay the attorney's fees, expenses and costs of the State Treasurer and the State attorney general.

#### **ARTICLE IV – SECURITY**

**Section 4.1 Pledge of System Net Revenues.** All System Net Revenues and other legally available funds of the Municipality to be appropriated as needed to make the payments required under this Agreement and the Municipal Bond, are hereby irrevocably pledged to the payment of the Repayment Installments as provided herein and the System Net Revenues and such other funds shall not be used for any other purpose while any of the Repayment Installments remain unpaid; *provided* that (i) any Prior Obligations which will remain outstanding hereunder shall be paid on parity with the Repayment Installments, (ii) out of the System Net Revenues and such other funds there may be apportioned such sums for such purposes as are expressly permitted herein. This pledge, together with the pledge created by all other Parity Debt, shall constitute a first lien on System Net Revenues and, subject to application of amounts on deposit therein as permitted herein, the Income Fund and other funds and accounts created hereunder for the payment of the Repayment Installments and all other Parity Debt in accordance with the terms hereof and of the Trust Agreement.

**Section 4.2 Allocation of System Revenues.** In order to carry out and effectuate the pledge and lien contained herein, the Municipality agrees and covenants that all System Revenues shall be received by the Municipality in trust hereunder and shall be deposited when and as received in the Water Revenue Fund”, a special fund hereby designated as the “Income Fund”, which fund is hereby established and which fund the Municipality agrees and covenants to maintain and to hold separate and apart from other funds so long as any Repayment Installments remain unpaid. To the extent the Municipality has an existing fund which satisfies the foregoing requirements, then such shall be deemed to be the “Income Fund” and the Municipality shall not be required to create a new fund. The Municipality may maintain separate accounts within the Income Fund. The amounts in the Income Fund shall be invested in investments permitted by State law. Moneys in the Income Fund shall be used and applied by the Municipality as provided in this Loan Agreement.

The Municipality shall, from the moneys in the Income Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. Thereafter, all remaining moneys in the Income Fund shall be set aside by the Municipality at the following times for the transfer to the following respective special funds in the following order of

priority; and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth in this Section.

(a) **Repayment Installments.** Not later than fifteen (15) days prior to each Repayment Installment Date, the Municipality shall, from the moneys in the Income Fund, transfer to the Trustee the Repayment Installment due and payable on that Repayment Installment Date. The Municipality shall also, from the moneys in the Income Fund, transfer to the applicable trustee, if any, for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other Parity Obligation Payments in accordance with the provisions of any Parity Obligation.

(b) **Surplus.** Moneys on deposit in the Income Fund not necessary to make any of the payments required above, may be expended by the Municipality at any time for any purpose permitted by law, including but not limited to payments with respect to Subordinate Obligations.

**Section 4.3 Additional Parity Debt.** The Municipality may at any time enter into any Parity Debt; *provided:*

(a) The Municipality shall be in compliance with all agreements, conditions, covenants and terms contained herein, and a Certificate of the Municipality to that effect shall have been filed with the Trustee;

(b) The Parity Debt shall have been duly authorized pursuant to all applicable laws;

(c) The most recent available audit of the Municipality shows that the System Net Revenues for the Fiscal Year immediately preceding the date of the resolution authorizing the Parity Debt shall have been sufficient to pay an amount representing 125% of Maximum Annual Debt Service;

(d) As an alternative to the audit report requirement in 4.3(c), the Municipality may utilize a report of the Consulting Engineer that shows that the System Net Revenues for the remainder of the projected life of the Parity Debt will be at least equal to 125% of the Maximum Annual Debt Service. In determining whether Parity Debt may be issued, the Consulting Engineer shall consider any probable increase (but not decrease) in Operation and Maintenance Costs, and there may be added to such System Net Revenues an allowance for net revenues from any improvements to the System to be made with the proceeds of such Parity Debt and also for net revenues from any improvements to the System which have been made from money from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 75% of the estimated

additional average annual net revenues to be derived from each such improvement for the first 36 month period in which each such improvement is in operation.

Nothing contained in this Section shall limit the issuance of any additional obligations of the Municipality payable from the System Net Revenues and secured by a lien and charge on the System Net Revenues if, after the issuance and delivery of such additional obligations, none of the Repayment Installments shall be unpaid. Furthermore, nothing contained in this Section shall limit the issuance of any Parity Debt for the purpose of refunding Outstanding Parity Debt or for any Subordinate Obligations.

**Section 4.4 Reserve Fund Deposit** If the Municipality fails to comply with the requirements as to System rates and charges set forth in Section 5.11 hereof and is unable to bring itself into compliance within 60 days after discovery by the Municipality of such failure, it shall immediately notify the Authority and the Trustee and shall establish from funds of Municipality a Reserve Fund held by the Municipality funded in the amount of 2.5% of the outstanding principal balance of the Loan during the first succeeding Fiscal Year, 5.0% of the outstanding principal balance of the Loan in the second succeeding Fiscal Year, 7.5% of the outstanding principal balance of the Loan in the third succeeding Fiscal Year and 10% of outstanding principal balance of the Loan in the fourth succeeding Fiscal Year and 10% of the outstanding principal balance of the Loan for each Fiscal Year, provided that at no time shall the amount in the Reserve Fund exceed the Reserve Requirement. The required percentage amounts shall be fully funded by the Municipality no later than the end of the applicable Fiscal Year. Such Reserve Fund shall be drawn upon if needed to make the Repayment Installments hereunder. The Municipality shall notify the Trustee of any drawing on the Reserve Fund within ten (10) days of the date of such drawing. Provided further, in the event that a drawing on the said Reserve Fund in order to make the Repayment Installments by Municipality on the Loan results in a balance in such fund lower than the Reserve Requirement, the Municipality shall replenish said account to the Reserve Requirement from System Net Revenues as soon as possible but not later than one (1) year from the date of such drawing.

**Section 4.5 Rate Stabilization Account.** The Municipality shall establish and maintain a Rate Stabilization Account. Monies in the Rate Stabilization Account may be transferred as determined from time to time by the Municipality. The Municipality may transfer funds into the Rate Stabilization Account from the Income Fund (Water Revenue Fund) or any other legally available source. The Municipality may transfer funds into the Rate Stabilization Account or withdraw funds from the Rate Stabilization Account at any time without limitation subject to the following provisions.

- (a) Money in the Rate Stabilization Account may be withdrawn at any time and used for any purpose for which System Revenues may be used. Amounts withdrawn from the Rate Stabilization Account shall increase System Revenues for the period for which they are withdrawn, and amounts deposited in the Rate Stabilization Account shall reduce System Revenues for the period for which they

are deposited. Credits from the Rate Stabilization Account may be posted in accordance with governmental accounting practices and procedures. Credits to or from the Rate Stabilization Account may relate to a prior Fiscal Year consistent with governmental accounting practices and procedures provided that such credits occur within the first quarter following the prior Fiscal Year. Earnings on the Rate Stabilization Account shall be credited to the Income Fund (the Water Revenue Fund) and shall be included in the definition of System Revenues for purposes of calculating debt service coverage.

(b) Unless otherwise excluded, funds withdrawn from the Rate Stabilization Account shall be included as System Net Revenues for all rate requirement purposes under Section 5.11 hereof.

**Section 4.6. Transfers from Rate Stabilization Account.** The Municipality may transfer funds from the Rate Stabilization Account to satisfy the rate requirements in Section 5.11 hereof. If the Municipality transfers funds from the Rate Stabilization Account during the current Fiscal Year or within the first quarter of the following Fiscal Year and designates that such transfer shall relate to the immediately preceding Fiscal Year to satisfy the following rate covenant. The Municipality covenants for the benefit of the Authority and its bondholders that going forward it will, as needed, charge rates and fees in connection with operation of the System which, when combined with other System Revenues, are adequate to generate System Net Revenues (exclusive of transfers from the Rate Stabilization Account) in the current Fiscal Year at least equal to 1.25 times the Annual Bond Debt Service due in that Fiscal Year. If the System Net Revenues fail to meet this level, the Municipality will promptly increase its rates and fees or reduce expenses to a level so that System Net Revenues (exclusive of transfers from the Rate Stabilization Account) are projected to meet the required level. The Municipality will demonstrate its compliance with the provisions of this Section 4.6 by providing a report to the Authority and the Trustee, if any, at the time of delivery of the Municipality's year-end audit that the Municipality is not out of compliance with Section 5.11. This report will demonstrate the Municipality's compliance with this covenant, or the methods by which the Municipality intends to achieve compliance with this covenant.

## ARTICLE V - SPECIAL COVENANTS AND AGREEMENTS

**Section 5.1 Punctual Payment.** The Municipality will punctually pay all Repayment Installments in strict conformity with the terms hereof and will faithfully satisfy, observe and perform all agreements, conditions, covenants and terms hereof.

**Section 5.2 Legal Existence.** The Municipality will use all means legally available to maintain its existence.

**Section 5.3 Against Encumbrances.** The Municipality will not mortgage or otherwise encumber, pledge or place any charge upon any of the System Net Revenues except as

provided herein, and will not issue any obligations secured by System Net Revenues senior to the Parity Debt; *provided*, that the Municipality may at any time issue any Subordinate Obligations.

**Section 5.4 Against Sale or Other Disposition of the System.** The Municipality will not sell or otherwise dispose of the System or any part thereof essential to the proper operation of the System or to the maintenance of the System Net Revenues, unless the Repayment Installments have been fully paid or provision has been made therefor in accordance with Article VIII hereof. The Municipality will not enter into any lease or agreement which impairs the operation of the System or any part thereof necessary to secure adequate System Net Revenues for the payment of the Repayment Installments, or which would otherwise impair the rights of the Owners with respect to the System Net Revenues or the operation of the System.

**Section 5.5 Maintenance and Operation of System.** The Municipality agrees that as long as it owns the Project it will (i) maintain, or cause to be maintained, the Project in as reasonably safe condition as its operations shall permit and (ii) maintain, or cause to be maintained, the Project in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

**Section 5.6 Right of Access to the System.** The Municipality agrees that during the term of this Loan Agreement, the Authority, the Trustee and the duly authorized agents of either of them shall have the right at all reasonable times during normal business hours to enter upon the site of the System to examine and inspect such System; provided, however, that this right is subject to federal and State of Idaho laws and regulations applicable to such site. The rights of access hereby reserved to the Authority and the Trustee may be exercised only after such agent shall have executed release of liability (which release shall not limit any of the Municipality's obligations hereunder) and secrecy agreements if requested by the Municipality in the form then currently used by the Municipality, and if the Trustee is the signatory, as agreed to by the Trustee, and nothing contained in this Section or in any other provision of this Loan Agreement shall be construed to entitle the Authority or the Trustee to any information or inspection involving the confidential knowledge of the Municipality.

**Section 5.7 Tax Exempt Status of Bonds.**

- (a) It is the intention of the parties hereto that interest on the Bonds, shall be and remain excluded from gross income for federal income tax purposes. To that end, the covenants and agreements of the Authority and the Municipality in this Section and in the Tax Certificate are for the benefit of the Trustee and each and every person who at any time will be a holder of the Bonds. Without limiting the generality of the foregoing, the Municipality and the Authority agree that there shall be paid from time to time the "Municipality's Share" of all amounts required to be rebated to the United States pursuant to the rebate requirement with respect

to the Bonds (the "Rebate Requirement") under Section 148 of the Code and the Tax Certificate. The "Municipality's Share" means the amount of the Rebate Requirement relating to the Municipal Bonds, determined as specified in the Tax Certificate, including (i) treating as the yield on the Municipal Bonds the yield on the Authority's Series 2012C Bonds allocated to the Municipal Bonds and (ii) treating any amounts held by the Authority and allocable to the Municipal Bonds as proceeds of the Municipal Bonds. This covenant shall survive payment in full or defeasance of the Bonds and the Municipal Bonds. The Municipality specifically covenants to pay or cause to be paid for and on behalf of the Authority to the United States at the times and in the amounts determined under Section 7.03 of the Trust Agreement the Municipality's share of the Rebate Requirement as described in the Tax Certificate and the Trust Agreement. The Authority shall not be liable to make any such payment except from funds provided by the Municipality for such purpose.

(b) The Authority covenants and agrees that it has not taken and will not take any action which results in interest to be paid on the Bonds being included in gross income of the holders of the Bonds for federal income tax purposes, and the Municipality covenants and agrees that it has not taken or permitted to be taken and will not take or permit to be taken any action which will cause the interest on the Bonds to become includable in gross income for federal income tax purposes. The Municipality acknowledges having read Section 7.03 of the Trust Agreement and agrees to perform all duties imposed on it by such Section, by this Section and by the Tax Certificate. Insofar as Section 7.03 of the Trust Agreement and the Tax Certificate impose duties and responsibilities on the Authority or the Municipality, they are specifically incorporated herein by reference.

(c) Notwithstanding any provision of this Section 5.7 or Section 7.03 of the Trust Agreement, if the Municipality shall provide to the Authority and the Trustee an Opinion of Bond Counsel to the effect that any specified action required under this Section 5.7 and Section 7.03 of the Trust Agreement is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds or Municipal Bonds, the Municipality, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and the covenants set forth in this Section 5.7 shall be deemed to be modified to that extent.

(d) The Municipality agrees to comply with the Authority's Post Issuance Tax Compliance Procedures, the current form of which is attached hereto as Exhibit F.

**Section 5.8 Notices to Trustee and Authority.** The Municipality hereby agrees to provide the Trustee and the Authority with notice of any event of which it has knowledge which, with the passage of time or the giving of notice, would be an Event of Default, such notice to include a description of the nature of such event and what steps are being taken to remedy such Event of Default.

**Section 5.9 Continuing Disclosure.** The Municipality hereby covenants and agrees to comply with the continuing disclosure requirements for the Bonds as promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, including those requirements set forth below. Notwithstanding any other provision of this Agreement, failure of the Municipality to comply with the requirements of Rule 15c2-12 applicable to the Bonds, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default hereunder or under the Trust Agreement; however, any Bondholder or beneficial owner of any Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Municipality to comply with its obligations pursuant to this Section 5.9.

(a) **Definitions.** In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Section unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Municipality pursuant to, and as described in, Sections 5.9(b) and 5.9(c).

“Beneficial Owner” shall mean any person who has the power, directly or indirectly, to vote or consent with respect to, or dispose of ownership of, any of the Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the Treasurer of the Municipality or his or her designee, or such other officer or employee as the Municipality shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, acting in its capacities Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Municipality and which has filed with the Trustee a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access System of the Municipal Securities Rule Making Board as provided for by the SEC, found at [www.emma.msrb.org](http://www.emma.msrb.org).

“Listed Events” shall mean any of the events listed in Section 5.9(d) hereof.

“Owner” means an owner of the Bonds and includes Beneficial Owners.

“Participating Underwriter” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean the Municipal Securities Rule Making Board (“MSRB”) or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through EMMA.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” means the Securities and Exchange Commission.

(b) Provision of Annual Reports.

(i) The Municipality shall, with the assistance of the Dissemination Agent, not later than six months after the Issue Date for the 2011 Fiscal Year, and six months after the end of the Municipality’s fiscal year (presently September 30) for the 2012 and all subsequent Fiscal Years, provide to the Repository and the Authority an Annual Report which is consistent with the requirements of Section 5.9(c) hereof. The filing shall be transmitted by the Dissemination Agent to the Repository and each Annual Report must be submitted in electronic format, accompanied by such identifying information as is prescribed by the Repository, and may include by reference other information as provided in Section 5.9(c) hereof; provided that the audited financial statements of the Municipality may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Municipality’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5.9(d)(vi).

(ii) Not later than fifteen (15) Business Days prior to the date specified in subsection (b)(i) for providing the Annual Report to the Repository, the Municipality shall provide the Annual Report, to the Dissemination Agent, to the Trustee (if the trustee is not the Dissemination Agent) and to the Authority. If by (15) Business Days prior to the date specified in subsection (b)(i), the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Municipality to determine if the Municipality is unable to provide to the Repository in compliance with the first sentence of this subsection (ii). Failure to provide the Annual Report to the Dissemination Agent by said date may

subject the Municipality to late fees in the amount as listed on Exhibit E and payment of any expenses of the Trustee or the Authority in enforcing this provision. If the Municipality has prior loans with the Authority, then those loans shall be subject to the same provisions.

(iii) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the Repository by the date required in subsection (i) the Dissemination Agent shall send a notice to the Repository in substantially the form as Exhibit D2 attached.

(iv) The Dissemination Agent (currently the Trustee) shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of the Repository; and

(2) file a report with the Municipality, the Authority and the Trustee (if the Dissemination Agent is not the Trustee) certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided to the Repository.

(c) Content of Annual Reports. The Municipality's Annual Report shall contain or include by reference the following:

(i) The audited financial statements for the Municipality for the most recently ended fiscal year, currently prepared, to the extent feasible, in substantial conformance with generally accepted accounting principles applicable from time to time to governmental entities, with any permitted exception and an adopted budget for the then current fiscal year.

(ii) An Annual Report in the form attached hereto as Exhibit D1 as to outstanding debt, litigation, compliance with regulatory matters and related items.

(d) Reporting of Significant Events.

(i) Pursuant to the provisions of this Section 5, the Municipality shall give or cause to be given, notice of the occurrence of any of the following Events with respect to the Bonds in a timely manner not more than ten (10) Business Days after the event:

(1) Principal and interest payment delinquencies.

(2) ~~Unscheduled draws on debt service reserves reflecting financial difficulties;~~

- (3) Unscheduled draws on credit enhancements reflecting financial difficulties;
  - (4) Substitution of credit or liquidity providers, or their failure to perform;
  - (5) Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds;
  - (6) Defeasances;
  - (7) Tender offers;
  - (8) Bankruptcy, insolvency, receivership or similar proceedings;
  - (9) Rating changes;
- (ii) Pursuant to the provisions of this Section 5, the Borrower shall give or cause to be given, notice of the occurrence of any of the following Events with respect to the Bonds in a timely manner not more than ten (10) Business Days after the event, if material:
- (1) Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated persons or their termination.
  - (2) Appointment of a successor or additional trustee or the change of the name of trustee;
  - (3) Non-payment related defaults;
  - (4) Modifications to the rights of the owners of the Bonds;
  - (5) Bond calls;
  - (6) Release, substitution or sale of property securing repayment of the Bonds.
- (iii) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events,

contact the Disclosure Representative, inform such person of the event, and request that the Municipality promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (vii). The Dissemination Agent shall have no duty or obligation to determine whether such Listed Events reflect financial difficulty or to determine the materiality of such Listed Events when in forming the Disclosure Representative of such Listed Event.

(iv) Whenever the Municipality obtains knowledge of the occurrence of a Listed Event under (ii) whether because of a notice from the Dissemination Agent pursuant to subsection (iii) or otherwise, the Municipality shall as soon as possible determine if such event would be material under applicable federal securities laws.

(v) If the Municipality has determined that knowledge of the occurrence of a Listed Event under (ii) would be material under applicable federal securities laws, the Municipality shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (vii).

(vi) If in response to a request under subsection (iii), the Municipality determines that the Listed Event would not be material under applicable federal securities laws, the Municipality shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (vii).

(vii) If the Dissemination Agent has been instructed by the Municipality to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the Repository.

(e) Termination of Reporting Obligation. The Municipality's obligations under this Disclosure Agreement shall terminate upon the legal defeasance or discharge of this Loan Agreement in accordance with Section 8.1. If such termination occurs prior to the final maturity of the Municipal Bonds, the Municipality shall give notice of such termination in the same manner as for a Listed Event under Section 5.9(d)(vii).

(f) Dissemination Agent. The Municipality may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and shall pay the fees and costs thereof, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Municipality pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be the Trustee. It is understood and agreed that any information that the Dissemination Agent may be

instructed to file with the Municipal Securities Rulemaking Board and the Repository shall be prepared and provided to it by the Municipality. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with the Municipality shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from the Municipality as the Authority.

(g) Amendment; Waiver. Notwithstanding any other provision of this Section 5.9, the Municipality and the Authority (or upon assignment of this Loan Agreement by the Authority, the Trustee) may amend this Section 5.9 (and the Trustee shall agree to any amendment so reasonably requested by the Municipality, to the extent that such amendment does not adversely affect the Trustee's or the Dissemination Agent's rights, protections or duties), and any provision of this Section 5.9 may be waived, provided that the following conditions are satisfied:

(i) If the amendment or waiver relates to the provisions of Section 5.9(b)(i), Section 5.9(c), or Section 5.9(d)(i) or (ii), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(ii) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(iii) The amendment or waiver either (1) is approved by the Owners of the Bonds in the same manner as provided in the Trust Agreement for amendments to the Trust Agreement with the consent of Owners, or (2) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners and Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Section 5.9, the Municipality shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Municipality. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (1) notice of such change shall be given in the same manner as for a Listed Event under Section 5.9(d)(vi), and (2) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on

the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

(h) **Additional Information.** Nothing in this Section 5.9 shall be deemed to prevent the Municipality from disseminating any other information, using the means of dissemination set forth in this Section 5.9 or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Section 5.9. If the Municipality chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Section 5.9, the Municipality shall have no obligation under this Section 5.9 to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

(i) **Duties, Immunities and Liabilities of Trustee and Dissemination Agent.** The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Section 5.9, and the Municipality agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees and expenses) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Municipality under this Section shall survive resignation or removal of the Dissemination Agent and payment of this Loan Agreement. The Dissemination Agent shall have the same rights and protections as afforded to it in its role as trustee under the Trust Agreement.

(j) **Notices.** Any notices or communications to or among any of the parties to this Section 5.9 may be given at their addresses as set forth in the Trust Agreement and this Loan Agreement.

(k) **Beneficiaries.** This Section 5.9 shall inure solely to the benefit of the Municipality, the Authority, the Trustee, the Dissemination Agent, the Participating Underwriters, Beneficial Owners and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 5.10 Eminent Domain Proceeds.** If all or any part of the System shall be taken by eminent domain proceedings, the Net Proceeds realized by the Municipality therefrom shall be deposited by the Municipality with the Trustee in a special fund which the Trustee shall establish as needed in trust and applied by the Municipality to the cost of acquiring and constructing additions, betterments, extensions or improvements to the System if (A) the Municipality first secures and files with the Trustee a Certificate of the Municipality showing (i) the loss in annual System Revenues, if any, suffered, or to be

suffered, by the Municipality by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the System then proposed to be acquired and constructed by the Municipality from such proceeds, and (iii) an estimate of the additional System Revenues to be derived from such additions, betterments, extensions or improvements; and (B) the Trustee has been furnished a Certificate of the Municipality, certifying that such additional System Revenues will sufficiently offset on a timely basis the loss of System Revenues resulting from such eminent domain proceedings so that the ability of the Municipality to pay Repayment Installments when due will not be substantially impaired, and such Certificate of the Municipality shall be final and conclusive, and any balance of such proceeds not required by the Municipality for such purpose shall be deposited in the Income Fund and applied as provided in Section 4.2 hereof, *provided*, that if the foregoing conditions are not met, then such proceeds shall be deposited with the Trustee and applied to make Repayment Installments as they come due and Parity Obligation Payments as they shall become due; *provided further* that the foregoing procedures for the application of Net Proceeds shall be subject to any similar provisions for Parity Debt on a pro rata basis.

If such eminent domain proceedings have had no effect, or at most an immaterial effect, upon the System Revenues and the security of the Repayment Installments, and a Certificate of the Municipality to such effect has been filed with the Trustee, then the Municipality shall forthwith deposit such proceeds in the Income Fund, to be applied as provided in Section 4.2 hereof.

#### **Section 5.11 Amounts of Rates, Fees and Charges.**

(a) The Municipality will, at all times while any of the Repayment Installments remain unpaid, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:

- (i) All current Operation and Maintenance Costs.
- (ii) The Repayment Installments and the payments for the other Parity Debt and the payment of the Subordinate Obligations as they become due and payable.
- (iii) All payments required for compliance with the terms hereof.
- (iv) All payments to meet any other obligations of the Municipality which are charges, liens or encumbrances upon, or payable from, the System Net Revenues.

(b) In addition to the requirements of the foregoing subsection (a) of this Section, the Municipality will, at all times while any Repayment Installments

remain unpaid, to the maximum extent permitted by law, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year, plus any credits from the Rate Stabilization Account in accordance with Sections 4.5 and 4.6 hereof, so as to yield System Net Revenues during such Fiscal Year equal to at least 125% of the Annual Debt Service in such Fiscal Year. If the Municipality is unable to meet this requirement, it will retain a Consulting Engineer to provide recommendations or adjustments to rates or modifications to operations to produce the necessary amount of system net revenues specified above in this Section 5.11(b) of this Loan Agreement.

(c) If Municipality shall fail to comply with Section 5.11(a) or (b) above and is unable to bring itself into compliance within 60 days thereafter, it shall immediately notify the Authority and the Trustee.

The Municipality may make or permit to be made adjustments from time to time in such rates, fees and charges and may make or permit to be made such classification thereof as it deems necessary, but shall not reduce or permit to be reduced such rates, fees and charges below those then in effect unless the System Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this Section.

**Section 5.12 Enforcement of and Performance Under Contracts.** The Municipality shall enforce all material provisions of any contracts to which it is a party, an assignee, successor in interest to a party or third-party beneficiary, in any case where such contracts provide for material payments or services to be rendered to the System. Further, the Municipality will comply with, keep, observe and perform all material agreements, conditions, covenants and terms, express or implied, required to be performed by it, contained in all contracts affecting or involving the System, to the extent that the Municipality is a party thereto.

**Section 5.13 Collection of Charges, Fees and Rates.** The Municipality will have in effect at all times rules and regulations requiring each user of the System to pay the applicable charges, fees and rates and providing for the billing thereof and for a due date and a delinquency date for each bill. In each case where such bill remains unpaid in whole or in part after it becomes delinquent, the Municipality will enforce the collection procedures contained in such rules and regulations.

**Section 5.14 No Free Service.** The Municipality will not permit any part of the System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, charitable organization, or by any public agency (including the State of Idaho and any Municipality, county, public agency, political subdivision, public corporation or agency or any thereof), unless otherwise required by law or existing written agreements.

**Section 5.15 Payment of Claims.** The Municipality will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the System or upon the System Net Revenues or any part thereof, or upon any funds held by the Trustee, or which might impair the security of the Repayment Installments; *provided*, that nothing herein contained shall require the Municipality to make any such payments so long as the Municipality in good faith shall contest the validity of any such claims and such nonpayment will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

**Section 5.16 Books of Record and Accounts; Financial Statements.** The Municipality will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the System and the Income Fund, and upon request will provide information concerning such books of record and accounts to the Trustee.

The Municipality will prepare annually, not later than one hundred eighty (180) days after the close of each Fiscal Year, so long as any Repayment Installments remain unpaid, an audited financial statement of the Municipality relating to the Income Fund and all other accounts or funds established pursuant hereto for the preceding Fiscal Year prepared by an Independent Certified Public Accountant, showing the balances in each such account or fund as of the beginning of such Fiscal Year and all deposits in and withdrawals from each such account or fund during such Fiscal Year and the balances in each such account or fund as of the end of such Fiscal Year, which audited financial statement shall include a statement as to the manner and extent to which the Municipality has complied with the provisions hereof. Failure to furnish said audited financial statements within said time may subject the Municipality to late charges by the Authority. The Municipality will furnish a copy of such audited financial statement to the Trustee upon request, and will furnish such reasonable number of copies thereof to investment bankers, security dealers and others interested in the Bonds.

**Section 5.17 Payment of Taxes and Other Charges and Compliance With Governmental Regulations.** The Municipality will pay and discharge all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the System or any properties owned by the Municipality, or upon the System Revenues, when the same shall become due; *provided*, that nothing herein contained shall require the Municipality to make any such payments so long as the Municipality in good faith shall contest the validity of any such taxes, service charges, assessments or other governmental charges and such nonpayment will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

The Municipality will duly comply with all applicable State, federal and local statutes and all valid regulations and requirements of any governmental authority relative to the operation of the System or any part thereof, but the Municipality shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith and such noncompliance will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

**Section 5.18 Maintenance of Insurance.** The Municipality agrees to maintain fire and extended coverage insurance on the System in such minimum amounts as are reasonable and prevalent for similar municipalities and systems in the State of Idaho and worker's compensation coverage on all full-time employees working on, in, near or about the System in accordance with applicable State laws. The Municipality may self-insure against such risks. The Municipality shall provide evidence of such insurance to the Authority or the Trustee, respectively, upon written request of either the Authority or the Trustee.

**Section 5.19 Delivery of Closing Documents.** The Municipality agrees to execute and deliver on the Closing Date the certificates attached hereto as Exhibit C.

**Section 5.20 Authority Fees.** The Municipality is paying to the Authority an Application Fee of \$500.00 which may be credited against the Authority Fee. The Municipality shall pay to the Authority the Authority Fee at the closing of the Loan and Annual Expense Charges each year.

## **ARTICLE VI - EVENTS OF DEFAULT AND REMEDIES**

**Section 6.1 Events of Default.** Any one of the following which occurs and continues shall constitute an Event of Default pursuant to this Loan Agreement:

- (a) failure by the Municipality to transmit to the Trustee any Repayment Installment by the 15th day prior to the respective Repayment Installment Date; or
- (b) failure of the Municipality to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Loan Agreement, other than making the payments referred to in (a) above, which continues for a period of 60 days after written notice, which notice shall specify such failure and request that it be remedied, given to the Municipality by the Authority or the Trustee, unless the Authority and the Trustee (at the direction of the Authority) shall agree in writing to an extension of such time; provided, however, that if the failure stated in the notice cannot be corrected within such period, the Authority and the Trustee (at the direction of the Authority) will not unreasonably withhold their consent to an extension of such time if corrective action is instituted within such period and diligently pursued until the default is corrected.

The provisions of subsection (b) of this Section are subject to the limitation that the Municipality shall not be deemed in default if and so long as the Municipality is unable to carry out its agreements hereunder by reason of strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State of Idaho or any of their departments, agencies, or officials, or any civil or military authority; insurrections, riots, epidemics, landslides;

lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Municipality; it being agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Municipality, and the Municipality shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Municipality, unfavorable to the Municipality. This limitation shall not apply to any default under subsection (a) of this Section.

**Section 6.2 Remedies On Default.** Whenever any Event of Default shall have occurred and shall continue, the following remedies may be pursued with respect to the Trustee, subject to its rights and protections under the Trust Agreement:

- (a) The Trustee shall have access to and the right to inspect, examine and make copies of the books and records and any and all accounts and data of the Municipality.
- (b) The Authority or the Trustee may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Municipality under this Loan Agreement including without limitation taking the actions under Section 3.6 hereof.

In case the Trustee or the Authority shall have proceeded to enforce its rights under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Authority, then, and in every such case, the Municipality, the Trustee and the Authority shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Municipality, the Trustee and the Authority shall continue as though no such action had been taken (provided, however, that any settlement of such proceedings duly entered into by the Authority, the Trustee or the Municipality shall not be disturbed by reason of this provision).

In case the Municipality shall fail forthwith to pay amounts due by reason of this Section 6.2 upon demand of the Trustee, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Municipality and collect in the manner provided by law the moneys adjudged or decreed to be payable.

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Municipality under the federal bankruptcy laws or any other applicable law, or in

case a receiver or trustee shall have been appointed for the property of the Municipality or in the case of any other similar judicial proceedings relative to the Municipality, or the creditors or property of the Municipality, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Municipality, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Trust Agreement after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

**Section 6.3 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Municipality should default under any of the provisions of this Loan Agreement and the Authority or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Municipality herein contained, the Municipality agrees to pay to the Authority or the Trustee the reasonable fees and expenses of such attorneys and such other expenses so incurred by the Authority or the Trustee.

**Section 6.4 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given the Authority hereunder shall also extend to the Trustee, and the Trustee and the holders of the Bonds shall be deemed third party beneficiaries of all covenants and agreements herein contained.

**Section 6.5 No Additional Waiver Implied by One Waiver.** In the event any agreement or covenant contained in this Loan Agreement should be breached by the Municipality and thereafter waived by the Authority or the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 6.6 No Cross Default.** The Municipality shall not be liable for the failure of any other municipality to make payments with respect to the Bonds. The occurrence of any Event of Default of any other municipality under such municipality's loan agreement shall not constitute an Event of Default of the Municipality under this Loan Agreement.

## ARTICLE VII - PREPAYMENT

**Section 7.1 Redemption of Bonds with Prepayment Moneys.** By virtue of the assignment of certain of the rights of the Authority under this Loan Agreement to the Trustee as is provided in Section 3.4 hereof, the Municipality agrees to and shall pay directly to the Trustee any amount permitted or required to be paid by it under this Article VII. The Trustee shall use the moneys so paid to it by the Municipality to effect redemption of the Bonds as set forth in this Article on the date specified for such redemption. The principal component of the Repayment Installments to be prepaid shall correspond in amount and maturity date to the Bonds related to this Loan Agreement.

**Section 7.2 Option to Prepay Installments.** The Repayment Installments specified in Schedule 1 attached hereto are subject to prepayment at the option of the Municipality on the dates and in the amounts as set forth in Schedule 1 which shall be consistent with the terms for redemption of the Authority Bonds.

**Section 7.3 Amount of Prepayment.** In the case of a prepayment, of the entire amount due hereunder pursuant to Section 7.2 hereof, the amount to be paid shall be a sum sufficient, together with other funds and (as such sufficiency is evidenced by a verification report of an Independent Certified Public Accountant) the yield on any securities deposited with the Trustee and available for such purpose, to pay all Repayment Installments thereafter due. In any event, any prepayment of Repayment Installments shall include sufficient funds to pay all principal, accrued interest, premium, if any, and other costs related to the redemption of the Authority's Bonds to be redeemed as a result of such prepayment.

**Section 7.4 Notice of Prepayment.** The Municipality shall give sixty days' prior written notice to the Authority and the Trustee specifying the date upon which any prepayment pursuant to this Article VII will be made. The Authority and the Trustee, at the request of the Municipality, shall forthwith take all steps necessary under the applicable provisions of the Trust Agreement (except that the Authority shall not be required to make payment of any money required for such redemption) to effect redemption of the part of the then outstanding Bonds related to this Loan Agreement, as the case may be, on the earliest practicable date thereafter, on or after the proposed prepayment date, on which such redemption may be made under applicable provisions of the Trust Agreement.

Notwithstanding anything to the contrary in this Loan Agreement, each notice contemplated in this Section 7.4 that is given with respect to an optional prepayment

pursuant to Section 7.2 hereof may state that it is subject to and conditional upon receipt by the Trustee on or prior to the proposed prepayment date of amounts sufficient to effect such prepayment and, if a notice so states, such notice shall be of no force and effect and the prepayment need not be made and the Repayment Installments will not become due and payable on the proposed prepayment date unless such amounts are so received on or prior to the proposed prepayment date.

## **ARTICLE VIII - DISCHARGE OF OBLIGATIONS**

### **Section 8.1 Discharge and Defeasance of Obligations.**

(a) The Repayment Installments shall be discharged to the extent the Bonds are discharged under the Trust Agreement. The principal components of the Repayment Installments to be discharged shall correspond in amount and maturity date to the Bonds related to this Loan Agreement.

(b) If the Municipality shall pay or cause to be paid or there shall otherwise be paid to the Trustee all of the Repayment Installments at the times and in the manner stipulated herein, and the Municipality shall pay in full all other amounts due hereunder, then all agreements, covenants and other obligations of the Municipality hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the Municipality all such instruments as may be necessary or desirable and prepared by or on behalf of the Municipality to evidence such discharge and satisfaction.

(c) Any Repayment Installments shall prior to the Repayment Installment Date or prepayment date thereof be deemed to have been paid within the meaning of and with the effect expressed in subsection (b) of this Section if (1) in case any of such Repayment Installments are to be prepaid, the Municipality shall have given to the Authority and Trustee in form satisfactory to it irrevocable instructions to provide notice in accordance with this Loan Agreement, (2) there shall have been deposited with the Trustee (A) money in an amount which shall be sufficient and/or (B) Government Securities, the interest on and principal of which when paid will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient, in the opinion of an Independent Certified Public Accountant, to transmit and pay when due the Repayment Installments on and prior to the Repayment Installment Dates or prepayment date thereof, as the case may be, and the prepayment premiums, if any, on such Repayment Installments, and (3) an Opinion of Counsel to the effect that such treatment will not adversely affect the tax-exempt status of interest on any Bonds hereunder, provided that this Agreement shall not be discharged and satisfied until all Repayment Installments have been paid or are deemed to have been paid as provided above.

**ARTICLE IX - NON-LIABILITY OF AUTHORITY;  
EXPENSES; INDEMNIFICATION**

**Section 9.1 Non-Liability of Authority.** The Authority shall not be obligated to pay the principal of, or premium, if any, or interest on the Bonds, or to discharge any other financial liability (including but not limited to financial liability under Section 5.7 hereof) in connection herewith, except from, and to the extent of, payments made by the Municipality under this Loan Agreement, or through the State intercept provided under Section 3.6 of this Loan Agreement and Section 67-8727, Idaho Code, as amended. The Municipality hereby acknowledges that the Authority's sole source of moneys to repay the Bonds will be provided by the payments made by the Municipality pursuant to this Loan Agreement (excluding payments to the Authority or the Trustee pursuant to Section 5.7 and 9.3 of this Loan Agreement) and payments from other participating Municipalities and the State intercept provided under Section 67-8727, Idaho Code, as amended.

**Section 9.2 Liability of Municipality Limited to System Revenues and Other Funds.** The Municipality shall not be required to advance any moneys derived from any source of income other than the System Revenues, the Income Fund and the other funds provided herein for the payment of the Repayment Installments or for the performance of any agreements or covenants required to be performed by it contained herein. The Municipality may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the Municipality for such purpose.

The obligation of the Municipality to make the Repayment Installments is a special obligation of the Municipality payable solely from the System Net Revenues and the other legally available funds provided for herein (except as provided in Section 3.6 or elsewhere herein), and does not constitute a debt of the Municipality or of the State of Idaho or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

**Section 9.3 Indemnification.** The Municipality releases the Authority and the Trustee from, and covenants and agrees that neither the Authority nor the Trustee shall be liable for, and covenants and agrees, to the extent permitted by law, to indemnify, defend and hold harmless the Authority and the Trustee and their officers, directors, elected officials, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the Project or any part thereof.

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**ARTICLE X - MISCELLANEOUS**

**Section 10.1 Notices.** All notices, certificates or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by first class mail, postage prepaid, addressed to the Authority, the Municipality or the Trustee, as the case may be. Notices for the Municipality shall be sent to the address specified in Schedule 1 attached hereto. Notices for the Authority and the Trustee shall be sent to the addresses set forth in the Trust Agreement. A duplicate copy of each notice, certificate or other communication given hereunder by either the Authority or the Municipality to the other shall also be given to the Trustee. The Authority, the Municipality and the Trustee may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 10.2 Severability.** If any provision of this Loan Agreement shall be held or deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

**Section 10.3 Execution of Counterparts.** This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.4 Amendments, Changes and Modifications.** Subsequent to the initial issuance of Bonds and prior to their payment in full, or provision for such payment having been made as provided in the Trust Agreement, this Loan Agreement may be amended, changed or modified as set forth in Article X of the Trust Agreement.

**Section 10.5 Governing Law.** This Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Idaho.

**Section 10.6 Authorized Municipality Representative.** Whenever under the provisions of this Loan Agreement the approval of the Municipality is required or the Authority or the Trustee is required to take some action at the request of the Municipality, such approval or such request shall be given on behalf of the Municipality by an Authorized Municipality Representative, and the Authority and the Trustee shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken.

**Section 10.7 Term of the Loan Agreement.** This Loan Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Municipal Bond is outstanding; provided, however, that the rights of the Trustee and the Authority under Section 9.3 hereof shall survive the termination of this Loan Agreement, the retirement of the Bonds and the removal or resignation of the Trustee. All representations and certifications by the Municipality as to all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Loan Agreement.

**Section 10.8 Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority, the Municipality, the Trustee and their respective successors and assigns.

**Section 10.9. Post Issuance Tax Compliance Procedures of the Authority.** The parties hereto both acknowledge the Post Issuance Tax Compliance Procedures of the Authority attached hereto as Exhibit F and agree that they will follow and comply with said procedures.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of Twin Falls, Idaho has caused this Loan Agreement to be executed in its name and its seal to be hereunto affixed by its duly authorized officers, and the Idaho Bond Bank Authority has caused this Loan Agreement to be executed in its name and attested by its duly authorized officers, all as of the date first above written.

**CITY OF TWIN FALLS, IDAHO**

By \_\_\_\_\_  
Mayor

[SEAL]

Attest:

\_\_\_\_\_  
City Clerk

**IDAHO BOND BANK AUTHORITY**

By \_\_\_\_\_  
Executive Director

**SCHEDULE 1: CITY OF TWIN FALLS**

Prior Note Date:	June 1, 2002
Prior Note Original Par Amount:	Department of Environmental Quality Note, Series 2002 (\$6,400,000).
Municipal Bond Purchase Price:	Par amount of \$ _____ plus a premium of \$ _____ less Underwriter Discount of \$ _____, for a net purchase price of \$ _____.
Repayment Amount:	\$ _____ plus interest.
Prior Obligations:	Prior Note (to be refunded); IBBA Promissory Note, Series 2009, issued on June 11, 2009, in the original principal amount of \$10,217,655; IBBA Promissory Note, Series 2010A-1, issued on May 18, 2010, in the original principal amount of \$5,070,000; IBBA Promissory Note Series 2010A-2, issued on May 18, 2010, in the original principal amount of \$13,525,000.
Prepayment Provisions:	The Repayment Installments coming due on or prior to September 15, 2022, are not subject to prepayment. The Repayment Installments coming due on and after September 15, 2023, are subject to prepayment, at the written direction of the Municipality and with the consent of the Authority, from any moneys deposited with the Trustee, as a whole or in part on any date on or after September 15, 2022, among such payment dates as designated by the Authority to the Trustee, at the price of par, plus accrued interest, if any, to the date of prepayment.
Municipality address:	321 Second Ave. E. Twin Falls, ID 83301
Disbursement of Loan:	<ol style="list-style-type: none"> <li>1. \$ _____ from the proceeds of the Municipal Bond to pay off the Prior Note. In addition, the Municipality shall apply \$ _____ from the reserve funds for the Prior Note to fund the Reserve Fund [?].</li> <li>2. \$ _____ to the Series 2012C Cost of Issuance Account held by the Trustee under the Trust Agreement to pay various costs of issuance on the Series 2012C Bonds.</li> <li>3. \$ _____ representing the Authority Fee shall be paid to the Authority from the Series 2012C Cost of Issuance Account.</li> <li>4. [\$ _____ to financial advisor of the Municipality, \$ _____ to the bond counsel of the Municipality and \$ _____ to the Trustee for a transaction fee.][delete?]</li> <li>5. To the Municipality \$ _____ as a rounding amount.</li> </ol>

Reserve Fund:	Municipality to transfer \$ _____ of funds held in the reserve funds for the Prior Note, for a total of \$ as provided in Section 4.4. of this Loan Agreement[?].
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## EXHIBIT A

### **Description of the Project**

#### Project

The Project consists of the issuance of the Municipality's Water Revenue Refunding Bond, Series 2012, in the principal amount of \$\_\_\_\_\_, for the purpose of refunding the Municipality's outstanding Prior Note which originally financed all or a portion of the costs of design and construction of various improvements, for the water system of the City of Twin Falls, Idaho.



EXHIBIT C

**Municipality Closing Documents**

- a. Bond Ordinance authorizing the Municipal Bond, and execution of the Loan Agreement.
- b. Loan Agreement, dated as of October 1, 2012 between the Municipality and the Authority.
- c. Bond of the Municipality.
- d. Loan Application.
- e. Opinion of Bond Counsel.
- f. Tax Certificate of Municipality.
- g. General Certificate.
- h. Signature and No Litigation Certificate.
- i. Receipt for Bond.
- j. IRS Form 8038-G.
- k. Receipt for Proceeds of Bond.
- l. Cash Flows

EXHIBIT D1

**Certificate Regarding Annual Financial Information**

The undersigned on behalf of the City of Twin Falls, Idaho (the "Municipality") hereby certifies in connection with the Loan Agreement dated as of October 1, 2012 between the Municipality and the Idaho Bond Bank Authority (the "Authority") that:

1. The attached financial statements are the true and correct audited financial statements of the Municipality for the Municipality's fiscal year ended September 30, \_\_\_\_ (the "Prior Fiscal Year").
2. Unless already stated in the attached financial statements, the debt, and the amount of debt, outstanding against the water system of the Municipality (including any debt to the Authority), as of the end of the Prior Fiscal Year, is as follows:

\_\_\_\_\_  
(Attach separate sheet if needed)

3. Except as stated below or on a separate attached sheet, there is not now, and has not been during the Prior Fiscal Year: (1) any default on the Loan Agreement or other debt of the Municipality; (2) any litigation filed against the Municipality challenging the validity of the Loan Agreement; (3) any citations of non-compliance by any regulatory authority with respect to the System; or (4) failure to comply with the System rates and charges requirement of Section 5.11 of the Loan Agreement, taking into account any transfers from the Rate Stabilization Account:

\_\_\_\_\_. (Attach separate sheet if needed)

4. There are, and have been during the Prior Fiscal Year, no material "Listed Events," as referenced in Section 5.9(d) of the Loan Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF TWIN FALLS, IDAHO

By \_\_\_\_\_  
Its: \_\_\_\_\_  
(Treasurer or Finance Director)

EXHIBIT D2

**Notice to Repository of Failure to File Annual Report**

Name of Municipality: City of Twin Falls, Idaho  
Name of Bond Issue: Idaho Bond Bank Authority Revenue Bonds, Series 2012C  
Date of Issuance: October 11, 2012

NOTICE IS HEREBY GIVEN that the City of Twin Falls, Idaho has not provided an Annual Report with respect to the above-named Bonds as required by Section 5.9 of the Loan Agreement dated as of October 1, 2012, between the Municipality and the Idaho Bond Bank Authority. [The Municipality anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

\_\_\_\_\_  
On behalf of the City of Twin Falls,  
Idaho

cc: City of Twin Falls, Idaho

EXHIBIT E

**Fees charged by Authority for failure to comply with  
Continuing Disclosure Requirements**

Continuing Disclosure Late Fee Scale

Due date – 3 months after:	Lesser of \$7,500 or 0.50% of issued amount
3 – 6 months after due date:	Lesser of \$500 or 0.20% of issued amount
6 months – 9 months after due date:	Lesser of \$500 or 0.20% of issued amount
9 months – 1 year after due date:	Lesser of \$500 or 0.20% of issued amount
Every 3 months after 1 year:	Lesser of \$500 or 0.20% of issued amount

This scale will pertain to every outstanding borrowing of the Municipality from the Idaho Bond Bank Authority.

EXHIBIT F

**Post Issuance Tax Compliance Procedures  
(attached)**

**Idaho Bond Bank Authority  
Post-Issuance Tax Compliance Procedures  
For Tax-Exempt Bonds**

February 13, 2012

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds ("Bonds") issued by the Idaho Bond Bank Authority (the "Authority") so as to ensure that the Authority complies with all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds. The Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Authority also reserves the right to change these policies and procedures from time to time.

**General**

Inasmuch as the Authority is a responsible conduit issuer authorizing the issuance of Bonds for eligible borrowers (each, a "Borrower"), the Authority now identifies post-issuance tax compliance procedures for all Bonds issued by the Authority for Borrowers, as well as the Authority's expectations of and requirements for all Borrowers concerning these procedures. For tax-exempt bonds issued by the Authority, each loan ("Loan") to each Borrower will be a tax-exempt obligation, as evidenced by an unqualified opinion of bond counsel to each Borrower. Ultimate responsibility for all matters relating to Authority financings and refinancings rests with the Authority Executive Director (the "Executive Director"). Ultimate responsibility for all matters relating to Loans rests with the corresponding officer at each Borrower.

**Post-Issuance Compliance Requirements**

**External Advisors / Documentation**

The Executive Director and other appropriate Authority personnel and the corresponding personnel of each Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for the appropriate tax status. Those requirements and procedures shall be documented in an Authority and Borrower resolutions, Tax Certificates and / or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds or the Loan, as appropriate.

The Executive Director and other appropriate Authority personnel and the corresponding personnel of each Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed assets and future contracts with respect to the use of output or throughput of Bond- financed assets.

Whenever necessary or appropriate, the Authority shall engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds.

#### Role of the Authority as Bond Issuer

Unless otherwise provided by Authority resolutions, unexpended Bond proceeds shall be held by the Authority, and the investment of Bond proceeds shall be managed by the Executive Director. The Executive Director shall maintain records regarding the investments and transactions involving Bond proceeds held by the Authority or the Trustee for the bonds. Funds transferred to the Borrower shall constitute expending Bond proceeds for the purposes of the Authority. Any investment of funds by the Borrower or Borrower's Trustee is the responsibility of the Borrower. As such, all record retention and other responsibilities associated with Borrower proceeds is the sole responsibility of the Borrower.

If an Authority resolution provides for Bond proceeds to be administered by a trustee, the trustee shall provide regular, periodic (monthly) statements regarding the investments and transactions involving Bond proceeds.

#### Arbitrage Rebate and Yield

The Authority will loan out all proceeds to underlying Borrowers at issue. As such, the requirement for arbitrage rebate and yield calculations will not be applicable.

The Authority will consult annually with bond counsel and tax counsel to confirm the applicability of arbitrage rebate and yield calculations. If at any time it is determined that these requirements are applicable, the Authority shall do the following:

- the Authority shall engage the services of a Rebate Service Provider, and the Authority or the Bond trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;
- upon request, the Executive Director and other appropriate Authority personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

- the Executive Director and other appropriate Authority personnel shall monitor efforts of the Rebate Service Provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and
- during the construction period of each capital project financed in whole or in part by Bonds, the Executive Director and other appropriate Authority personnel shall monitor the investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds.

For working capital financings, if any, the Authority shall follow procedures set forth in the applicable Tax Certificate and/or instructions delivered at bond or note closing.

The Authority shall retain copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements".

#### Use of Bond Proceeds

Except for the obligation of the Authority to maintain records regarding the Loans made for Bond proceeds, it is the Authority's policy that the Borrower shall be responsible for:

- monitoring the use of Loan proceeds and the use of Loan-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of Loan-financed assets throughout the term of the Loan (and in some cases beyond the term of the Loan) to ensure compliance with covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;
- maintaining records identifying the Loan and the assets or portion of assets that are financed or refinanced with proceeds of each Loan;
- consulting with Bond Counsel and other professional expert advisers in the review of the Loan and any contracts or arrangements involving use of Loan-financed facilities to ensure compliance with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;
- maintaining records regarding the Loan and for any contracts or arrangements involving the use of Loan-financed facilities as might be necessary or appropriate to

document compliance with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;

- meeting or conferring at least annually with personnel responsible for the Loans and Loan-financed assets to identify and discuss any existing or planned use of Loan-financed assets or output or throughput of Loan-financed assets, to ensure that the Loan and those uses are consistent with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates.

- taking timely remedial actions under section 1.141-12 of the Treasury Regulations (or other remedial actions authorized by the Commissioner of the IRS under Section 1.141-12(h) of the Regulations) to prevent from being considered "deliberate actions" any actions of the Borrower which cause the conditions of the private business tests or the private loan financing test to be met resulting in the Loan becoming a private activity bond.

All relevant records and contracts shall be maintained as described below and in the applicable Tax Certificate. The Borrower, in the Tax Certificate relating to the Loan and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above.

#### Investment of Bond Proceeds

Investment of bond proceeds maintained by the Authority shall remain in compliance with the arbitrage bond rules and rebate of arbitrage as supervised by the Executive Director.

- Guaranteed investment contracts ("GIC") will be purchased only using the three-bid "safe harbor" of applicable Treasury regulations, in compliance with fee limitations on GIC brokers in the regulations.
- Other investments will be purchased only in market transactions.
- Calculations of rebate liability will be performed annually by outside consultants.
- Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the issuer.
- Identify date for first rebate payment at time of issuance. Enter in records for the issue.

The investment of all proceeds received by the Borrower is the responsibility of the Borrower to supervise and maintain compliance with the arbitrage bond rules and rebate of arbitrage.

### Record Keeping Requirements

Unless otherwise specified in applicable Authority resolutions or Tax Certificates, the Authority shall maintain the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Authority at or in connection with closing of the issue of Bonds; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.

Unless otherwise specified in applicable Authority resolutions or Tax Certificates, it is the Authority's policy that the Borrower shall be responsible for maintaining the following documents for the term of each Loan (including refunding obligations, if any) plus at least three years:

- a copy of all material documents relating to capital expenditures financed or refinanced by Loan proceeds, including (without limitation) loan documents for the Authority's pooled loans to municipalities and construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Loan proceeds and records identifying the assets or portion of assets that are financed or refinanced with Loan proceeds;
- a copy of all contracts and arrangements involving private use of Loan-financed assets or for the private use of output or throughput of Loan-financed assets; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.

The Borrower, in the Tax Certificate relating to the Loan and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for retaining the records listed above.



**Date:** Monday, September 10, 2012  
**To:** Honorable Mayor and City Council  
**From:** Lee Glaesemann, Staff Engineer

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**Requests:**

Consideration of a request to award the 2012 Kimberly/Highland Water Extension Project to Sawtooth Construction, Inc. of Ketchum Idaho, in the amount of \$2,753,757.00

**Time Estimate:**

The staff presentation will take approximately 5 minutes with additional time for questions.

**Background:**

On August 14th, 2012 bids were opened for the 2012 Kimberly/Highland Water Extension Project. This project includes the installation of waterlines to improve the water supply to the Southeast part of the City which includes the southeast industrial zone and Chobani. The work consists of the installation of a new 24" waterline from the intersection of Kimberly Road and Eastland Drive to the Hankins Pump Station and an 18" waterline from the intersection of Highland Ave at Madrona Street to the intersection of Eastland Drive and Wright Ave.

Three were received that ranged from \$2,753,757.80 to \$3,066,483.15. The lowest apparent bid came from Sawtooth Construction, Inc. of Ketchum Idaho, in the amount of \$2,753,757.00. Sawtooth's bid was checked for completeness and it was found that they did not include "evidence of authority" to sign the bid as required in Article 13.01 of the Instructions to bidders.

An Attorney for Knife River Corporation has provided two letters disputing a potential award of the project to Sawtooth Construction due to the lack of "evidence of authority" being provided with their bid. The Attorney contends that lack of "evidence of authority" to sign the bid is a material error that prevents the City from ensuring that Sawtooth Construction is bound to the terms of the bid.

JUB requested the required "evidence of authority" to sign the bid and Sawtooth provided a copy of their Board's meeting minutes, which indicated that the individual signing the submitted bid had the authority to do so. Upon receiving Sawtooth's "evidence of authority", it appears that the Attorney's concern is immaterial.

Article 19.01 of the Instructions to Bidders indicates that the City "...reserves the right to waive all informalities not involving price, time, or changes in the work...". Since the "evidence of authority" error does not involve price, time, or changes in the work and "evidence of authority" has subsequently been provided, the City has the right to waive the informality.

**Approval Process:**

A majority vote of the Council to waive the "evidence of authority" informality and Award of Contract to Sawtooth Construction.

**Budget Impact:**

The City entered into an agreement with Agro-Farma and the Urban Renewal Agency(URA) where URA agreed to allocate \$4 million to the construction of the Kimberly/Eastland Water Extension project and the City agreed to

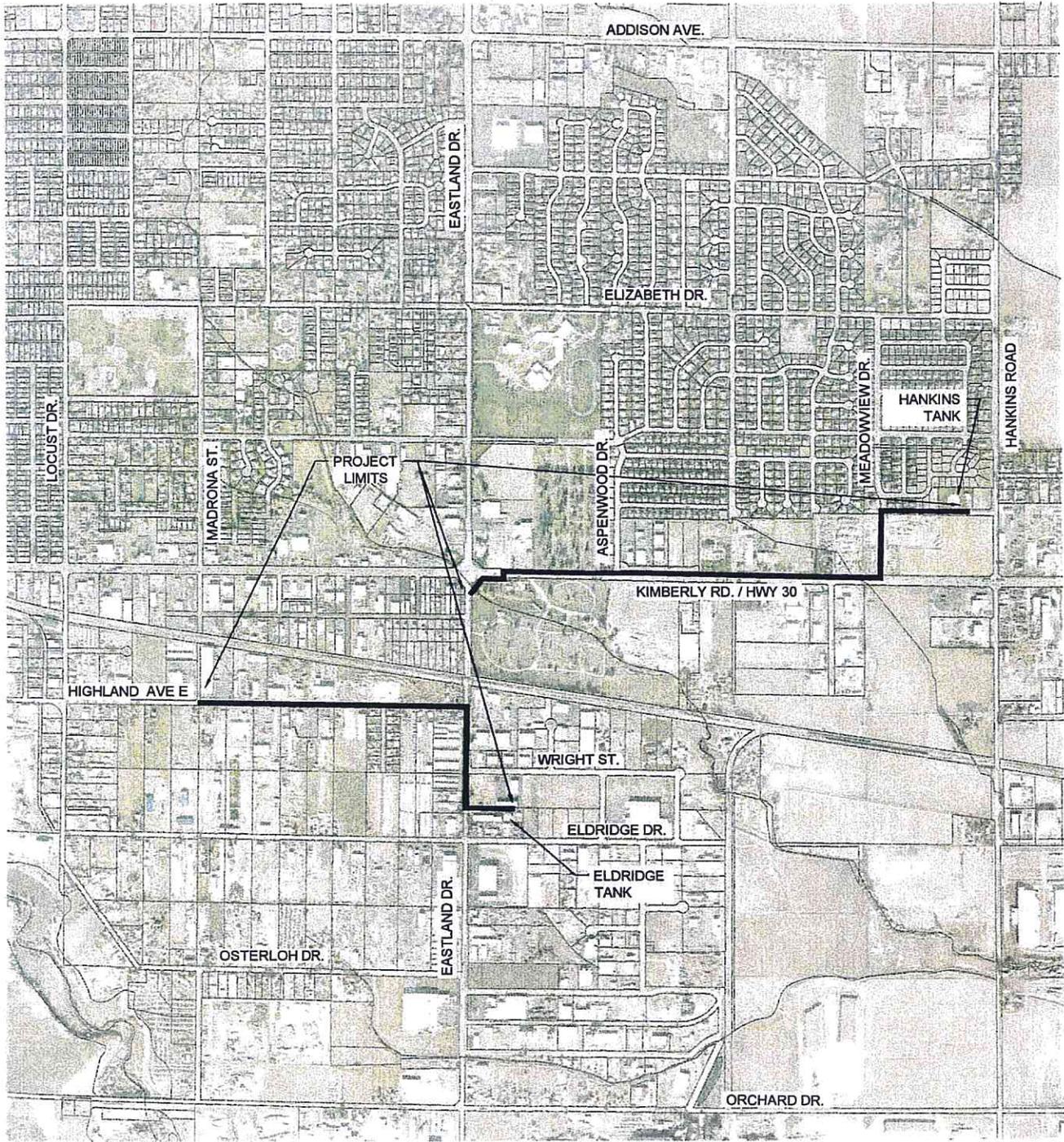
construct the work. Approval of this contract enables the URA and City to continue to execute the obligations of the development agreement.

**Conclusion:**

Staff recommends that City Council waive the informality and award the 2012 Kimberly/Highland Water Extension Project to Sawtooth Construction, Inc in the amount of \$2,753,757.00.

**Attachments:**

1. Vicinity Map
2. JUB Engineers letter
3. Bid Tabulation
4. Two Knife River Bid Dispute Letters



VICINITY MAP



J-U-B ENGINEERS, INC.

J-U-B COMPANIES



THE LANGDON GROUP



GATEWAY MAPPING INC.

August 20, 2012

RECEIVED

AUG 21 2012

CITY OF TWIN FALLS  
PLANNING & ZONING

Lee Glaesemann, P.E.  
City of Twin Falls  
324 Hansen Street East  
Twin Falls, ID 83301

**RE: City of Twin Falls 2012 Kimberly/Highland Water Extension Rebid  
Bid Opening & Award Recommendation**

Dear Lee:

On August 14, 2012, Bids were opened for the rebidding of the City of Twin Falls 2012 Kimberly/Highland Water Extension project. A total of three Bids were received and opened. Enclosed is a Bid Tabulation summarizing the unit prices and total Bid amount for each Bidder. Following is a summary of the Bid results:

<b>Contractor</b>	<b>Bid Schedule</b>
Sawtooth Construction, Inc.	\$2,753,757.00
Knife River Corporation	\$2,843,990.16
Anderson & Wood Construction	\$3,066,483.50
Engineer's Estimate	\$2,491,724.50

Per the Bidding Documents, the basis of award for the project will be on the Bid that is lowest in total price, conforms to all the material terms and conditions of the Bidding Documents, and is in the best interest of the Project. According to Article 19.01 in the *Instructions to Bidders* the "Owner also reserves the right to waive all informalities not involving price, time, or changes in the work..."

Sawtooth Construction, Inc. (Sawtooth) appears to be the lowest bidder and to have completed the required Bidding documents, except that they did not provide "evidence of authority" to sign the Bid as required in Article 13.01 of the *Instructions to Bidders*. Upon my request the Contractor has provided this "evidence of authority" to sign. A valid Idaho Public Works Contractor License was also confirmed with the State of Idaho Division of Building Safety.

As a result, it is the opinion of J-U-B ENGINEERS, Inc. (J-U-B) that the City should waive the informality per Article 19.01 of the *Instructions to Bidders* and provide a Notice of Award to Sawtooth for the 2012 Kimberly/Highland Water Extension project.

Upon City Council approval, please sign and date the enclosed Notice of Award and return it to J-U-B. We will then send the Notice of Award and Contract Documents to Sawtooth for execution.

If you have any questions or need additional information, please contact me or Mark Holtzen, P.E. at 208-733-2414.

Sincerely,  
J-U-B ENGINEERS, Inc.

A handwritten signature in blue ink that reads "Gary M. Haderlie". The signature is fluid and cursive.

Gary Haderlie, P.E.

Enclosures:

- Bid Tabulation
- Notice of Award

Cc (Email): Jackie Fields, P.E., City of Twin Falls  
Mark Holtzen, P.E., J-U-B ENGINEERS, Inc.

PROJECT: City of Twin Falls  
2012 Kimberly/Highland Water Extension Rebid

BID DATE: August 14, 2012

ENGINEER: J-U-B Engineers, Inc.  
115 Northstar Ave.  
Twin Falls, Idaho 83301

PAY ITEM REFERENCE	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT	Sawtooth Construction		Knife River Corporation		Anderson & Wood Construction	
				Ketchum, ID		Boise, ID		Meridian, ID	
303.4.1.C.1	Exploratory Excavation	54	EA	\$371.00	\$20,034.00	\$175.00	\$9,450.00	\$420.00	\$22,680.00
307.4.1.A.4	Miscellaneous Surface Repair (Sod)	1577	SY	\$8.00	\$12,616.00	\$15.00	\$23,655.00	\$17.00	\$26,809.00
307.4.1.A.6	Miscellaneous Surface Repair (Hydroseed)	1186	SY	\$6.00	\$7,116.00	\$3.00	\$3,558.00	\$5.00	\$5,930.00
307.4.1.A.8	Miscellaneous Surface Repair (Natural Ground)	1211	SY	\$3.00	\$3,633.00	\$1.00	\$1,211.00	\$2.00	\$2,422.00
307.4.1.E.1	Type "C-1" Surface Repair	481	SY	\$17.00	\$8,177.00	\$13.00	\$6,253.00	\$9.00	\$4,329.00
307.4.1.E.1	Type "C-2" Surface Repair	140	SY	\$22.00	\$3,080.00	\$26.00	\$3,640.00	\$15.00	\$2,100.00
307.4.1.G.1	Type "P-1" Surface Repair (Highland)	4308	SY	\$47.00	\$202,476.00	\$58.50	\$252,018.00	\$54.00	\$232,632.00
307.4.1.G.1	Type "P-2" Surface Repair (Eastland)	465	SY	\$51.00	\$23,715.00	\$54.00	\$25,110.00	\$56.00	\$26,040.00
307.4.1.G.1	Type "P-3" Surface Repair (Collector)	1185	SY	\$32.00	\$37,920.00	\$43.00	\$50,955.00	\$54.00	\$63,990.00
307.4.1.G.1	Type "P-4" Surface Repair (Kimberly Rd)	5412	SY	\$54.00	\$292,248.00	\$56.00	\$303,072.00	\$54.00	\$292,248.00
307.4.1.K.3	Soft Spot Repair Uncrushed Aggregate (Min. of 10 CY and above)	300	CY	\$33.00	\$9,900.00	\$44.00	\$13,200.00	\$36.00	\$10,800.00
307.4.1.K.7	Soft Spot Repair Crushed Aggregate (Min. of 10 CY and above)	300	CY	\$33.00	\$9,900.00	\$52.00	\$15,600.00	\$45.00	\$13,500.00
308.4.1.A.1	Steel Casing Pipe Boring & Jacking - 20" Diameter-Soil	85	LF	\$439.00	\$37,315.00	\$306.00	\$26,010.00	\$422.00	\$35,870.00
308.4.1.A.1	Steel Casing Pipe Boring & Jacking - 36" Diameter-Soil	115	LF	\$574.00	\$66,010.00	\$410.00	\$47,150.00	\$510.00	\$58,650.00
308.4.1.A.1	Steel Casing Pipe Boring & Jacking - 20" Diameter-Rock	80	LF	\$772.00	\$61,760.00	\$1,480.00	\$118,400.00	\$1,010.00	\$80,800.00
308.4.1.A.1	Steel Casing Pipe Boring & Jacking - 36" Diameter-Rock	30	LF	\$2,000.00	\$60,000.00	\$0.01	\$0.30	\$2,800.00	\$84,000.00
308.4.2.A.1	Overcut Grouting	310	LF	\$46.00	\$14,260.00	\$38.00	\$11,780.00	\$45.00	\$13,950.00
401.4.1.B.1	6" Water Main - Type 2 Trench, Soil	17	LF	\$43.00	\$731.00	\$63.00	\$1,071.00	\$75.00	\$1,275.00
401.4.1.B.1	12" Water Main - Type 2 Trench, Soil	109	LF	\$55.00	\$5,995.00	\$53.00	\$5,777.00	\$57.00	\$6,213.00
401.4.1.B.1	12" Water Main - Type 2 Trench, Rock	14	LF	\$139.00	\$1,946.00	\$140.00	\$1,960.00	\$140.00	\$1,960.00
401.4.1.B.1	18" Water Main - Type 1 Trench, Soil	2463	LF	\$79.00	\$194,577.00	\$66.00	\$162,558.00	\$69.00	\$169,947.00
401.4.1.B.1	18" Water Main - Type 1 Trench, Rock	858	LF	\$158.00	\$135,564.00	\$128.00	\$109,824.00	\$134.00	\$114,972.00
401.4.1.B.1	24" Water Main - Type 1 Trench, Soil	3676	LF	\$104.00	\$382,304.00	\$97.00	\$356,572.00	\$97.00	\$356,572.00
401.4.1.B.1	24" Water Main - Type 1 Trench, Rock	1845	LF	\$182.00	\$335,790.00	\$174.00	\$321,030.00	\$197.00	\$363,465.00

PROJECT: City of Twin Falls  
2012 Kimberly/Highland Water Extension Rebid

BID DATE: August 14, 2012

ENGINEER: J-U-B Engineers, Inc.  
115 Northstar Ave.  
Twin Falls, Idaho 83301

PAY ITEM REFERENCE	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT	Sawtooth Construction		Knife River Corporation		Anderson & Wood Construction	
				Ketchum, ID		Boise, ID		Meridian, ID	
401.4.1.C.1	Water Main Fitting - 12" - 22.5° Bend	3	EA	\$492.00	\$1,476.00	\$1,870.00	\$5,610.00	\$1,200.00	\$3,600.00
401.4.1.C.1	Water Main Fitting - 12" - 45° Bend	2	EA	\$286.00	\$572.00	\$2,220.00	\$4,440.00	\$1,200.00	\$2,400.00
401.4.1.C.1	Water Main Fitting - 18" - 45° Bend	2	EA	\$627.00	\$1,254.00	\$1,300.00	\$2,600.00	\$2,000.00	\$4,000.00
401.4.1.C.1	Water Main Fitting - 18" - 90° Bend	1	EA	\$747.00	\$747.00	\$1,420.00	\$1,420.00	\$2,000.00	\$2,000.00
401.4.1.C.1	Water Main Fitting - 24" - 11.25° Bend	2	EA	\$991.00	\$1,982.00	\$4,100.00	\$8,200.00	\$3,000.00	\$6,000.00
401.4.1.C.1	Water Main Fitting - 24" - 22.5° Bend	8	EA	\$1,133.00	\$9,064.00	\$4,200.00	\$33,600.00	\$3,000.00	\$24,000.00
401.4.1.C.1	Water Main Fitting - 24" - 45° Bend	4	EA	\$1,319.00	\$5,276.00	\$2,600.00	\$10,400.00	\$3,000.00	\$12,000.00
401.4.1.C.1	Water Main Fitting - 24" - 90° Bend	2	EA	\$1,320.00	\$2,640.00	\$2,600.00	\$5,200.00	\$3,000.00	\$6,000.00
401.4.1.C.1	Water Main Fitting - 6" x 12" Reducer	3	EA	\$373.00	\$1,119.00	\$270.00	\$810.00	\$600.00	\$1,800.00
401.4.1.C.1	Water Main Fitting - 8" x 12" Reducer	1	EA	\$400.00	\$400.00	\$380.00	\$380.00	\$800.00	\$800.00
401.4.1.C.1	Water Main Fitting - 12" x 18" Reducer	1	EA	\$628.00	\$628.00	\$970.00	\$970.00	\$1,200.00	\$1,200.00
401.4.1.C.1	Water Main Fitting - 18" x 24" Reducer	2	EA	\$1,997.00	\$3,994.00	\$2,370.00	\$4,740.00	\$1,800.00	\$3,600.00
401.4.1.C.1	Water Main Fitting - 8" x 8" Tee	1	EA	\$356.00	\$356.00	\$420.00	\$420.00	\$800.00	\$800.00
401.4.1.C.1	Water Main Fitting - 12" x 12" Tee	5	EA	\$1,143.00	\$5,715.00	\$1,340.00	\$6,700.00	\$1,200.00	\$6,000.00
401.4.1.C.1	Water Main Fitting - 12" x 18" Tee	3	EA	\$1,187.00	\$3,561.00	\$1,630.00	\$4,890.00	\$2,100.00	\$6,300.00
401.4.1.C.1	Water Main Fitting - 18" x 18" Tee	2	EA	\$6,391.00	\$12,782.00	\$4,500.00	\$9,000.00	\$2,100.00	\$4,200.00
401.4.1.C.1	Water Main Fitting - 12" x 24" Tee	4	EA	\$1,419.00	\$5,676.00	\$2,300.00	\$9,200.00	\$4,000.00	\$16,000.00
401.4.1.C.1	Water Main Fitting - 18" x 24" Tee	1	EA	\$4,199.00	\$4,199.00	\$6,800.00	\$6,800.00	\$4,000.00	\$4,000.00
401.4.1.C.1	Water Main Fitting - 24" x 24" Tee	2	EA	\$3,448.00	\$6,896.00	\$4,500.00	\$9,000.00	\$4,000.00	\$8,000.00
401.4.1.D.1	Connect to Existing 6" Water Main	1	EA	\$2,679.00	\$2,679.00	\$1,550.00	\$1,550.00	\$2,000.00	\$2,000.00
401.4.1.D.1	Connect to Existing 8" Water Main	1	EA	\$2,717.00	\$2,717.00	\$1,590.00	\$1,590.00	\$2,500.00	\$2,500.00
401.4.1.D.1	Connect to Existing 12" Water Main	10	EA	\$4,545.00	\$45,450.00	\$1,650.00	\$16,500.00	\$3,000.00	\$30,000.00
401.4.1.D.1	Connect to Existing 18" Water Main	2	EA	\$6,112.00	\$12,224.00	\$2,410.00	\$4,820.00	\$3,500.00	\$7,000.00
401.4.1.D.1	Connect to Existing 24" Water Main	4	EA	\$6,234.00	\$24,936.00	\$2,950.00	\$11,800.00	\$4,000.00	\$16,000.00
401.4.1.E.1	Water Main Crossing	21	EA	\$597.00	\$12,537.00	\$800.00	\$16,800.00	\$750.00	\$15,750.00
401.4.1.F.1	Relocate Water Main	1	EA	\$8,998.00	\$8,998.00	\$4,170.00	\$4,170.00	\$8,000.00	\$8,000.00
401.4.1.G.1	Transmission Main Crossing	1	EA	\$12,361.00	\$12,361.00	\$0.01	\$0.01	\$25,000.00	\$25,000.00
401.4.2.A.1	Irr. Crossing Water Main, 36" Steel Casing, Type 4 Trench, Rock	30	LF	\$659.00	\$19,770.00	\$350.00	\$10,500.00	\$900.00	\$27,000.00

PROJECT: City of Twin Falls  
2012 Kimberly/Highland Water Extension Rebid

BID DATE: August 14, 2012

ENGINEER: J-U-B Engineers, Inc.  
115 Northstar Ave.  
Twin Falls, Idaho 83301

PAY ITEM REFERENCE	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT	Sawtooth Construction		Knife River Corporation		Anderson & Wood Construction	
				Ketchum, ID		Boise, ID		Meridian, ID	
402.4.1.A.1	Valve - 18" - Butterfly Valve	6	EA	\$5,060.00	\$30,360.00	\$10,500.00	\$63,000.00	\$12,000.00	\$72,000.00
402.4.1.A.1	Valve - 24" - Butterfly Valve	1	EA	\$5,337.00	\$5,337.00	\$18,700.00	\$18,700.00	\$18,000.00	\$18,000.00
402.4.1.A.1	Valve - 6" - Gate Valve	1	EA	\$729.00	\$729.00	\$1,050.00	\$1,050.00	\$1,200.00	\$1,200.00
402.4.1.A.1	Valve - 12" - Gate Valve	10	EA	\$1,619.00	\$16,190.00	\$1,950.00	\$19,500.00	\$2,400.00	\$24,000.00
403.4.1.A.1	Hydrant	3	EA	\$7,161.00	\$21,483.00	\$4,300.00	\$12,900.00	\$4,700.00	\$14,100.00
404.4.1.A.1	Relocate Water Service	723	LF	\$19.00	\$13,737.00	\$10.00	\$7,230.00	\$28.00	\$20,244.00
404.4.1.B.1	Water Service Crossing (<4")	10	EA	\$764.00	\$7,640.00	\$505.00	\$5,050.00	\$600.00	\$6,000.00
405.4.1.A.1	Potable/Non-potable Crossing	5	EA	\$1,286.00	\$6,430.00	\$0.01	\$0.05	\$1,000.00	\$5,000.00
507.4.1.L.1	Sewer Trunk Crossing	13	EA	\$764.00	\$9,932.00	\$620.00	\$8,060.00	\$750.00	\$9,750.00
507.4.1.M.1	Sewer Service Crossing	7	EA	\$764.00	\$5,348.00	\$870.00	\$6,090.00	\$900.00	\$6,300.00
507.4.1.N.1	Relocate Sewer Service	3	EA	\$2,100.00	\$6,300.00	\$1,080.00	\$3,240.00	\$1,200.00	\$3,600.00
601.4.1.B.1	Storm Drain/Culvert/Gravity Irrigation Pipe Crossing	20	EA	\$522.00	\$10,440.00	\$830.00	\$16,600.00	\$750.00	\$15,000.00
706.4.1.A.5	Remove and Replace 6" Vertical Curb and Gutter	180	LF	\$41.00	\$7,380.00	\$35.00	\$6,300.00	\$45.00	\$8,100.00
706.4.1.B.1	Remove and Replace Concrete Valley Gutter/Spandrel	137	SY	\$67.00	\$9,179.00	\$60.00	\$8,220.00	\$63.00	\$8,631.00
706.4.1.E.1	Remove and Replace Sidewalk	44	SY	\$56.00	\$2,464.00	\$39.00	\$1,716.00	\$54.00	\$2,376.00
901.4.1.C.1	Pressure Irrigation Crossing	5	EA	\$437.00	\$2,185.00	\$890.00	\$4,450.00	\$450.00	\$2,250.00
1103.4.1.A.1	Construction Traffic Control	1	LS	\$3,500.00	\$3,500.00	\$120,000.00	\$120,000.00	\$89,000.00	\$89,000.00
1104.4.1.A.1	Pavement Line Paint (approximately 6,691 LF)	1	LS	\$9,275.00	\$9,275.00	\$3,650.00	\$3,650.00	\$9,500.00	\$9,500.00
2010.4.1.A.1	Mobilization	1	LS	\$137,544.00	\$137,544.00	\$125,067.80	\$125,067.80	\$125,000.00	\$125,000.00
2020.A.1.F.1	Reference and Reset Monument	2	EA	\$649.00	\$1,298.00	\$600.00	\$1,200.00	\$500.00	\$1,000.00
SP 2153.4.1.A.1	Remove and Reset Reducer	1	EA	\$547.00	\$547.00	\$720.00	\$720.00	\$750.00	\$750.00
SP 2153.4.1.A.1	Remove and Reset Tee	1	EA	\$547.00	\$547.00	\$1,300.00	\$1,300.00	\$750.00	\$750.00
SP 2153.4.1.A.1	Remove and Reset 24" Butterfly Valve	1	EA	\$1,550.00	\$1,550.00	\$2,160.00	\$2,160.00	\$2,500.00	\$2,500.00
SP 2153.4.1.A.1	Remove and Reset Existing Hydrant Assembly including valve	1	EA	\$2,826.00	\$2,826.00	\$1,500.00	\$1,500.00	\$2,500.00	\$2,500.00
SP 2153.4.1.A.1	Remove and Reset Sign	1	EA	\$1,478.00	\$1,478.00	\$59.00	\$59.00	\$900.00	\$900.00
SP 2153.4.1.B.1	Replace Fence in accordance with CTF Sta. Dwg F-3.	294	LF	\$14.00	\$4,116.00	\$18.00	\$5,292.00	\$23.00	\$6,762.00
SP 2153.4.1.B.1	Remove and Replace Tree	2	EA	\$865.00	\$1,730.00	\$1,900.00	\$3,800.00	\$1,100.00	\$2,200.00
SP 2153.4.1.B.1	Remove and Replace Electrical Conduit	5	EA	\$1,442.00	\$7,210.00	\$588.00	\$2,940.00	\$750.00	\$3,750.00

PROJECT: City of Twin Falls  
2012 Kimberly/Highland Water Extension Rebid

BID DATE: August 14, 2012

ENGINEER: J-U-B Engineers, Inc.  
115 Northstar Ave.  
Twin Falls, Idaho 83301

PAY ITEM REFERENCE	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT	Sawtooth Construction		Knife River Corporation		Anderson & Wood Construction	
				Ketchum, ID		Boise, ID		Meridian, ID	
SP 2153.4.1.C.1	Remove and Dispose of Tree	1	EA	\$219.00	\$219.00	\$580.00	\$580.00	\$900.00	\$900.00
SP 2153.4.1.C.1	Remove and Salvage Manhole and Globe Valve (Valve to City)	1	EA	\$437.00	\$437.00	\$600.00	\$600.00	\$500.00	\$500.00
SP 2153.4.1.C.1	Remove and Salvage Gate Valve (Valve to City)	1	EA	\$219.00	\$219.00	\$500.00	\$500.00	\$500.00	\$500.00
SP 2153.4.1.C.1	Remove and Salvage Fittings (Fittings to City)	4	EA	\$219.00	\$876.00	\$500.00	\$2,000.00	\$500.00	\$2,000.00
SP 2153.4.1.C.1	Remove and Dispose of Fence	312	LF	\$8.00	\$2,496.00	\$4.00	\$1,248.00	\$6.00	\$1,872.00
SP 2160.4.1.A.1	Gas Service Crossing	13	EA	\$437.00	\$5,681.00	\$490.00	\$6,370.00	\$450.00	\$5,850.00
SP 2160.4.1.B.1	Gas Main Crossing (>2")	17	EA	\$437.00	\$7,429.00	\$810.00	\$13,770.00	\$800.00	\$13,600.00
SP 2160.4.1.C.1	Relocate Gas Main (>2")	1	EA	\$4,194.00	\$4,194.00	\$5,800.00	\$5,800.00	\$5,000.00	\$5,000.00
SP 2165.4.1.A.1	Abandon Waterservice, water meter, and meterbox for cemetery	1	EA	\$437.00	\$437.00	\$500.00	\$500.00	\$500.00	\$500.00
SP 2165.4.1.B.1	Abandon Valve Box	1	EA	\$437.00	\$437.00	\$500.00	\$500.00	\$350.00	\$350.00
SP 2170.4.1.A.1	Combination Air/Vacuum Vault - 24"	3	EA	\$14,558.00	\$43,674.00	\$13,100.00	\$39,300.00	\$12,500.00	\$37,500.00
SP 2171.4.1.A.1	Flow Control Valve Vault 18"	1	EA	\$38,633.00	\$38,633.00	\$45,100.00	\$45,100.00	\$47,000.00	\$47,000.00
SP 2171.4.1.B.1	Pressure Reducing/Pressure Sustaining Valve Vault 12"	1	EA	\$28,197.00	\$28,197.00	\$23,000.00	\$23,000.00	\$37,000.00	\$37,000.00
SP 2172.4.1.A.1	Blow-off Assembly - 4"	1	EA	\$9,637.00	\$9,637.00	\$6,700.00	\$6,700.00	\$9,100.00	\$9,100.00
SP 2175.4.1.A.1	Flow Meter Vault 18"	1	EA	\$23,501.00	\$23,501.00	\$41,800.00	\$41,800.00	\$27,000.00	\$27,000.00
SP 2216.4.1.A.1	Storm Water Management	1	LS	\$6,000.00	\$6,000.00	\$60,000.00	\$60,000.00	\$45,000.00	\$45,000.00
SP 3000.4.1.A.1	Fiber Optic Conduit - Dual 1.25"	10159	LF	\$7.00	\$71,113.00	\$4.00	\$40,636.00	\$7.00	\$71,113.00
SP 3000.4.1.B.1	Fiber Optic Manhole	6	EA	\$1,430.00	\$8,580.00	\$1,400.00	\$8,400.00	\$3,200.00	\$19,200.00
SP 3001.4.1.A.1	Fiber Optic Cable- 24 count	11609	LF	\$3.00	\$34,827.00	\$3.00	\$34,827.00	\$3.50	\$40,631.50
SP 3001.4.1.B.1	Connect to Existing Fiber Optic	3	EA	\$1,113.00	\$3,339.00	\$200.00	\$600.00	\$1,200.00	\$3,600.00
Total Bid:					\$2,753,757.00		\$2,843,990.16		\$3,066,483.50

**Note:**

1. This table is a tabulation of the unit prices and total prices received from Bidders during the bidding process. It does not indicate nor convey the responsiveness of the Bid.

**NOTICE OF AWARD**

Date: \_\_\_\_\_

Project: 2012 Kimberly/Highland Water Extension

Owner: City of Twin Falls

Owner's Contract No.:

Contract: 2012 Kimberly/Highland Water Extension

Engineer's Project No.: 60-11-080

Bidder: Sawtooth Construction, Inc.

Bidder's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

P.O. Box 41  
Ketchum, ID 83340

You are notified that your Bid dated August 14, 2012 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for the City of Twin Falls 2012 Kimberly/Highland Water Extension project as specified in the Contract Documents.

The Contract Price of your Contract is two million, seven hundred fifty-three thousand, seven hundred fifty seven and 00/100 Dollars (\$2,753,757.00).

Three copies of the proposed Contract Documents accompany this Notice of Award.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award.

1. Deliver to the Owner three fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract Security Bonds and Insurance as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01). The Contractor should be aware that Insurance information shall be submitted and approved prior to starting the Work.
3. Other conditions precedent:  
You are required to return an acknowledged copy of this Notice of Award to the Owner.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

\_\_\_\_\_  
City of Twin Falls  
Owner

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

Copy to Engineer

Jones ♦ Gledhill ♦ Fuhrman ♦ Gourley, P.A.  
A T T O R N E Y S   A T   L A W

*David T. Krueck*

August 15, 2012

**Via Electronic & U.S. Mail**

Jackie Fields, City Engineer  
Lee Glaesemann, Project Manager  
City of Twin Falls  
321 2<sup>nd</sup> Avenue East  
Twin Falls, Idaho 83303  
Email: [jfields@tfid.org](mailto:jfields@tfid.org)  
[lglaesemann@tfid.org](mailto:lglaesemann@tfid.org)

Gary Haderlie, P.E.  
JUB Engineers  
115 Northstar Avenue  
Twin Falls, Idaho 83301  
Email: [ghaderlie@jub.com](mailto:ghaderlie@jub.com)

Re: 2012 Kimberly/Highland Water Extension  
**BID DISPUTE**

Dear Ms. Fields, Mr. Glaesemann and Mr. Haderlie:

I write to you as the attorney for Knife River Corporation – Northwest (“Knife River”) regarding the bid opening for the Project described above. For the reasons set forth below, Knife River is the lowest responsible and responsive bidder for the Project, and is entitled to be awarded the contract for the Project. The Bid Form submitted by Sawtooth Construction, Inc. (“Sawtooth Construction”) contains a material defect that renders the bid non-responsive as a matter of law.

On August 14, 2012, the City of Twin Falls (“City”) conducted the bid opening for the Project, and received bids from three bidders, including Sawtooth Construction and Knife River. Sawtooth Construction submitted a bid for \$2,753,793.00, while Knife River’s bid to perform the contract is \$2,843,990.16. Sawtooth Construction, however, violated Article 13.03 of the

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E-mail: [dkrueck@idalaw.com](mailto:dkrueck@idalaw.com)

Jackie Fields  
Lee Glaesemann  
Gary Haderlie  
August 15, 2012  
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Instructions to Bidders by failing to comply with the requirement to accompany with its bid evidence of authority for the officer who signed the Bid Form. Article 13.03 provides in pertinent part, "A Bid by a corporation shall be executed in the corporate name by the president or vice-president or other corporate officer accompanied by evidence of authority to sign" (emphasis added). In addition, the Bid Form itself contains an instruction to Bidders to "attach evidence of authority to sign" underneath the signature line for the officer executing the Bid Form on behalf of the corporation. Sawtooth Construction's Bid Form was signed by Preston T. Ziegler in his purported capacity as the President of the company. The Bid Form does not contain any evidence whatsoever that Mr. Ziegler had authority to sign the Bid Form, and, in turn, bind Sawtooth Construction to honor the company's bid.

The failure to include evidence of authority to sign the Bid Form renders Sawtooth Construction's bid non-responsive under Idaho's competitive bidding statutes. Idaho Code § 67-5711C(1) requires the City to award the contract for the Project to the "lowest responsible and responsive bidder." In order for a bid to be deemed "responsive," the bid must facially comply in all material terms with the Instructions to Bidders and applicable Idaho law. By failing to follow the City's mandatory instruction to accompany its bid with evidence of authority to sign, the City cannot ensure that Sawtooth Construction is bound to the terms of its bid, which is precisely why the City requires all bidders to furnish this written authorization with each Bid Form.

The City must reject Sawtooth Construction's bid in order to maintain integrity and fairness in the bidding process and avoid providing Sawtooth Construction with an unfair advantage over other bidders. While the City reserved the right in Article 19.01 to waive certain bid informalities, this right is limited. Under Idaho law, the City can only waive errors that are trivial and immaterial. The well-established rule to determine whether a bid irregularity is material requires a two step evaluation: (1) does the error materially affect the rights or ability of the City in administering the contract or enforcing its rights, and (2) would waiver of the error potentially present any unfair advantage to the bidder.

Sawtooth Construction's failure to include evidence of Mr. Ziegler's authority to sign the Bid Form meets both parts of this evaluation. The City's rights have been materially affected because there is insufficient evidence in the Sawtooth Construction Bid Form to ensure the City's ability to legally bind Sawtooth Construction to its bid. Sawtooth Construction could claim that the Bid Form is unenforceable, which compromises the City's rights. Since Sawtooth Construction could potentially claim it is not bound by its bid, Sawtooth Construction gains the unfair advantage of being able to choose whether it proceeds with entering into a contract with the City for the construction of the Project. Waiver of this defect fatally compromises the bidding process to the advantage of a bidder who fails to follow the City's Instructions to Bidders. Whether Sawtooth Construction exercises its right to withdraw its bid is irrelevant. The fact that it has the ability to withdraw its bid undermines the bidding process, and demonstrates the materiality of the defect in its incomplete Bid Form.

Jackie Fields  
Lee Glaesemann  
Gary Haderlie  
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Sawtooth Construction could claim a mistake in its Bid Form under Idaho Code § 54-1904C, and the City would not have any recourse against the Bid Bond provided by Sawtooth Construction. This statute requires the bidder to demonstrate a clerical mistake in its bid and that the mistake was material. Sawtooth Construction could easily establish the elements to seek relief under Idaho Code § 54-1904C, which further supports the conclusion that the error in Sawtooth Construction's Bid Form is material and renders the bid non-responsive.

Knife River submitted a fully responsive bid, which includes the necessary evidence of authorization and complies in every respect to the City's Instructions to Bidders. Consequently, Knife River is the lowest responsible and responsive bidder, and is entitled to be awarded the contract for this Project.

In the event the City would like to hold a public hearing to resolve this Bid Dispute, Knife River will diligently work to present additional legal authority to support its claim to entitlement of the award of the contract.

If you have any questions or comments regarding the position taken by Knife River, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Krueck', with a large, sweeping flourish underneath.

David T. Krueck

DTK:kdt

Jones ♦ Gledhill ♦ Fuhrman ♦ Gourley, P.A.  
A T T O R N E Y S A T L A W

*David T. Krueck*

August 27, 2012

**Via Electronic & U.S. Mail**

Jackie Fields, City Engineer  
Lee Glaesemann, Project Manager  
City of Twin Falls  
321 2<sup>nd</sup> Avenue East  
Twin Falls, Idaho 83303  
Email: [jfields@tfid.org](mailto:jfields@tfid.org)  
[lglaesemann@tfid.org](mailto:lglaesemann@tfid.org)

Gary Haderlie, P.E.  
JUB Engineers  
115 Northstar Avenue  
Twin Falls, Idaho 83301  
Email: [ghaderlie@jub.com](mailto:ghaderlie@jub.com)

Re: 2012 Kimberly/Highland Water Extension  
**BID DISPUTE**

Dear Ms. Fields, Mr. Glaesemann and Mr. Haderlie:

I write to you as the attorney for Knife River Corporation – Northwest (“Knife River”) regarding the award of the contract for the Kimberly/Highland Water Extension project. On August 15, 2012, I sent a letter on behalf of Knife River explaining why we believe the Bid Form submitted by Sawtooth Construction, Inc. (“Sawtooth Construction”) is non-responsive and must be rejected by the City.

I have not received any response to my August 15<sup>th</sup> correspondence, but did see that the City Council is considering at tonight’s meeting whether it may waive as a mere informality the failure of a bidder to furnish evidence of authority to sign a bid on behalf of a corporation. This issue is related to the request to reject the bid submitted by Hills Construction, Inc. for the 2012 Hankins Pump Station Generator and Pump Project. In the Staff Report, reference is made to the

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Jackie Fields  
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Gary Haderlie  
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City's ability to waive the requirement of submitting evidence of authority to sign the Bid Form. It appears the City is considering the recommendation to reject the Hills Construction bid on the grounds that its mobilization bid item exceeded the 5% minimum, which affects price and, therefore, cannot be waived.

For the reasons set forth in my August 15, 2012 letter, Knife River contends that failure to submit a bid with evidence of authority to sign the Bid Form on behalf of a corporation cannot be waived because it is a material irregularity that impairs the City's ability to enforce its contract while also providing the non-conforming bidder with an unfair advantage. We respectfully request that the Sawtooth Construction bid be rejected, and the contract awarded to Knife River as the lowest responsible and responsive bidder for the Kimberly/Highland Water Extension project. Alternatively, we would like the opportunity to have a substantive hearing to decide the issue.

If you have any questions or comments regarding the position taken by Knife River, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Krueck', with a large, stylized flourish above the name.

David T. Krueck

DTK:kdt



**Date:** Monday, September 10, 2012  
**To:** Honorable Mayor and City Council  
**From:** Mitch Humble, Community Development Director

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**Request:**

Consideration of adoption of Ordinance 3038, amending City Code Title 9, Chapters 6, 7, and 8 regarding regulations for parking on streets and within public parking lots.

**Time Estimate:**

The staff presentation will take approximately 10 minutes. Time will be needed for discussion and questions.

**Background:**

At the July 16, 2012 Council meeting, staff presented a downtown parking management plan to the Council. Part of that presentation was a brief discussion regarding needed changes to the City Code regulations for parking on streets and in public parking lots. These Code changes were discussed as part of the overall parking management plan. Staff has spent the last several weeks reviewing the Codes and preparing the attached necessary amendments. We are proposing several changes to the Code. Each is described and discussed below.

- **9-8: Parking Meters** – This entire Chapter deals with parking meters. Since we have removed the meters, much of this chapter is no longer necessary to include. This proposal strikes this Chapter entirely. There are a few regulations contained in this Chapter that are still appropriate even without meters. Those regulations are proposed to be moved to other Code sections as part of this ordinance. This is also the Chapter that included the prohibition of business owners and employees from parking on Main Street. The deletion of this Chapter eliminates that regulation. We are not proposing to place that regulation anywhere else in the Code. We believe that this prohibition was far too difficult to enforce with any kind of consistency.
- **9-6-15: Stopping for Loading or Unloading** – The meter chapter contained a provision limiting parking for loading/unloading to 20 minutes. This limit is not included anywhere else in the Code. Therefore, this proposal includes moving the 20 minute limit to 9-6-15 since it is the section of the Code that deals with loading/unloading anyway.
- **9-6-20: Parking Regulations, Signs, and Curb Markings** – The meter chapter included a provision requiring cars to be parking within the painted lines identifying the boundaries of a parking space. That same regulation is not currently included in any other part of the Code. Therefore, this proposal includes the addition of this regulation to the Code section dealing with curb markings.
- **9-7-2: Designation of Lots and Spaces** – This is the Code section that says the Council has designated public parking lots in the down town area. This code section specifically identifies blocks where the lots are located by block number and plat name. This proposal strikes the block number references. They are not necessary to be listed in the Code and they are dated. They do not include all the current parking lot locations. Also, if we were to add a public parking lot in the future, we would have to amend the Code to include that block reference as well.

This is also the Code section that says the Council will adopt a downtown parking lot map. Since we are proposing to change the lot layouts a bit, we have attached the updated maps and propose that they be adopted by the Council as the Official Designation Maps for the downtown parking plan. These maps include the change that the Council made to the "Orange" lot, changing one row of parking from parking pass to customer parking.

- **9-7-3: Establishment of Parking Time Spaces** – This Code section establishes the 3-hour limit in the free public parking spaces. It also now exempts parking pass holders from the 3-hour limit.

- **9-7-4: Designation of Off Street Parking Spaces** – This section references some lease arrangements that the City has or had with a couple of private parties. It lists those parties by name. They are also dated and some of the private parties have changed. Other will likely change in the future. This proposal removes the names and simply refers to agreements with “private parties” to avoid necessary Code amendments as we add agreements or parties change.
- **9-7-5: Monthly Parking Fees** – This section authorized the Business Improvement District to set a monthly lease rate for parking leases. We have changed this to say that the City Council can establish fees for parking passes.
- **9-7-6: Illegal Parking** – This section included a regulation regarding the operating hours of the parking lots. Unfortunately, it conflicted with another section that also set operating hours. We have eliminated the operating hours from this section, leaving the other section to establish the operating hours for the lots. We also changed lease references to parking pass references.
- **9-7-7: Meter Prohibitions** – This section is proposed to be eliminated entirely as it deals with meters in the public parking lots.
- **9-7-9: Operating Hours** – This section has been amended to set public parking lot operating hours as 8:00 a.m. to 5:00 p.m. Monday through Friday. During those times, time limits and parking passes will be enforced. This section also included a list of six holidays where time limits and parking passes will not be enforced. The list does not match the list of City holidays. We have eliminated the list and replaced it with “City designated holidays and other special days as may be designated by the City Council.”
- **9-7-10: Enforcement and Fines** – This section created an escalating fine structure. The first violation in a month was a warning with no fine. The fines escalated up to \$50 for the fifth and subsequent violations in the same month. The section also established increases if a fine is not paid in a timely manner. We are proposing to eliminate the fee escalation and replace it with a simple flat fee for all violations. City Code 9-6-21 establishes a flat \$35 fine for all parking violations to Title 9, Chapter 6. In an effort to be consistent, we propose setting the fine for Title 9, Chapter 7 parking violations to also be \$35. 9-6-21 includes a provision for fines not paid within 48 hours to escalate to \$50. We are proposing to match the 9-6-21 language entirely.

One of the changes discussed above dealt with the elimination of the warning violations. While I support the idea of removing the warning violation, I am concerned that some education time will be needed as we implement the new parking regulations. Therefore, we propose to have a grace period upon adoption of the attached ordinance to allow staff a chance to educate the public on the new regulations before beginning enforcement in earnest and assessing fines for violations. We need to work with the media and our own public relations staff to get the word out on these new regulations. We also propose to create an educational flyer that we will hand out instead of a ticket for those found in violation of the parking regulations for a period of at least a month.

In addition to the attached Code amendments, we need to adopt a fee resolution establishing fees for the parking passes. Since these will be new fees, the resolution will require a public hearing. We have scheduled a parking pass fee hearing for the September 24 City Council meeting. We are proposing the following parking pass fee rates, to be discussed more thoroughly at the 9/24/12 hearing:

- Daily - \$2.00
- Weekly - \$8.00
- Monthly - \$20.00
- Yearly - \$220.00

#### Approval Process:

Typically, Code amendments from me require a public hearing. However, these amendments are proposed to Title 9 of the city Code. They do not require a public hearing. A simple majority vote of the Council is required to approve the amendments. There is an ordinance attached. Adoption of that ordinance at tonight's meeting will require suspension of the rules and that the ordinance is placed on third and final reading by title only.

**Budget Impact:**

Adoption of the attached Code amendments will change the parking violation fine structure. A significant portion of that change is the elimination of the warning violation. Since a majority of the parking violations have historically been warning violations, we might see an increase in parking fine revenue.

**Regulatory Impact:**

Approval of the request will change the parking rules and regulations for streets and public parking lots as described above.

**Conclusion:**

Staff recommends that the Council:

1. Adopt the attached ordinance as presented,
2. Approve the attached public parking lot maps as presented, and
3. Authorize staff to proceed with the parking pass fee public hearing scheduled for September 24, 2012.

**Attachments:**

1. Proposed Ordinance No. 3038
2. Parking Lot Location Map
3. Parking Layout Maps for Each Public Lot

ORDINANCE NO. 3038

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AMENDING TWIN FALLS CITY CODE §9-6-15(A) BY LIMITING LOADING AND UNLOADING TO 20 MINUTES; AMENDING TWIN FALLS CITY CODE §9-6-20 BY THE ADDITION OF SUBSECTIONS (D) AND (E) PROVIDING FOR PARKING LINES AND MARKINGS; AMENDING TWIN FALLS CITY CODE §9-7-2 BY APPLYING OFF STREET PARKING REGULATIONS TO THE ENTIRE TWIN FALLS TOWNSITE; AMENDING TWIN FALLS CITY CODE §9-7-3 PROVIDING FOR PARKING PASS OFF STREET PARKING; AMENDING TWIN FALLS CITY CODE §9-7-4 BY PROVIDING FOR PRIVATE OFF STREET PARKING; AMENDING TWIN FALLS CITY CODE §9-7-5 BY PROVIDING FOR THE ESTABLISHMENT OF PARKING PASS FEES; AMENDING TWIN FALLS CITY CODE §9-7-6(C) BY PROHIBITING PARKING IN SPACES DESIGNATED FOR PARKING PASSES WITHOUT DISPLAYING A PARKING PASS; REPEALING TWIN FALLS CITY CODE §9-7-7; AMENDING TWIN FALLS CITY CODE §9-7-9 BY DESIGNATING OFF STREET PARKING HOURS OF 8:00 AM TO 5:00 PM MONDAY THROUGH FRIDAY; AMENDING TWIN FALLS CITY CODE §9-7-10 BY PROVIDING FOR A FINE OF \$35.00, OR \$50.00 IF NOT PAID WITHIN 48 HOURS; REPEALING CHAPTER 8 OF TITLE 9 OF THE TWIN FALLS CITY CODE, REGULATING PARKING METERS; AND PROVIDING FOR PUBLICATION BY SUMMARY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

Section 1: That Twin Falls City Code §9-6-15 is amended as follows:

“9-6-15: STOPPING FOR LOADING OR UNLOADING:

(A) Designation Of Permits For Curb Loading Zones: The city is authorized to determine the location of passenger and freight curb loading zones and shall place and maintain appropriate signs indicating the same and stating the hours during which the provisions of this section are applicable. The city shall not designate or sign any curb loading zone upon special request of any person unless such person makes application for a permit for such zone and pays the actual cost of erecting zoning signs or markers.

A loading zone may be occupied by a vehicle while actually engaged in loading and unloading persons, supplies or merchandise for a period of not to exceed twenty (20) minutes during any one period of time, except by special permission by the Police Department.

...”

Section 2: That Twin Falls City Code §9-6-20 is amended by the addition of new subsections (D) and (E) providing for parking lines and markings, as follows:

“9-6-20: PARKING REGULATIONS, SIGNS AND CURB MARKINGS: ...

(D) The City may cause lines or markings to be painted or placed upon the curb, or street adjacent to the curb, designating parking spaces. Each vehicle parked in a designated parking space shall park within the lines or markings so established for that particular space. It shall be unlawful and a violation of this Code to park any vehicle across any such line or markings, or to park a vehicle in such position that the same shall not be entirely within the area designated for the space in which such vehicle is parked.

(E) Any vehicle parked in such parking space shall be parked parallel or diagonal to the curb in accordance with the lines or markings so established.”

Section 3: That Twin Falls City Code §9-7-2 is amended as follows:

“9-7-2: DESIGNATION OF LOTS AND SPACES:

The city council has designated and approved the off street parking plan map which designates the current off street parking lots and spaces located in ~~blocks 86, 87, 88, 102, 103 and 104,~~ the Twin Falls townsite, and hereby by reference adopts said map as the official designation thereof and said map shall be kept on file in the office of the city engineer for public inspection.

From time to time the city council may redesignate such off street public parking lots and spaces upon said map and such redesignation shall become a part of this chapter.

Designated off street public parking spaces and private parking spaces as shown on said official map shall be properly designated in each of the off street parking lots.”

Section 4: That Twin Falls City Code §9-7-3 is amended as follows:

“9-7-3: ESTABLISHMENT OF OFF STREET PARKING TIME SPACE TIME LIMITS AND PARKING PASSES:

There are hereby established within the off street public parking lots a maximum three (3) hour limit free and parking pass off street monthly public leased parking spaces. Parking pass holders may park in designated off street parking spaces without a maximum time limit during operating hours of the off street parking lots.”

Section 5: That Twin Falls City Code §9-7-4 is amended as follows:

“9-7-4: DESIGNATION OF OFF STREET PRIVATE PARKING SPACES:

There are hereby established off street private parking spaces as designated upon the official off street parking plan map and as may from time to time be hereafter changed, which spaces have, by agreement with the city, been reserved for use by ~~the owners of the First Interstate Bank building and the Coleman, McIntyre & Ritchie building~~ private parties and such spaces are not included within the off street public parking spaces ~~for rent~~ available to the public, but the same are subject to all regulations and provisions of this chapter.”

Section 6: That Twin Falls City Code §9-7-5 is amended as follows:

“9-7-5: MONTHLY PARKING FEES:

~~The business improvement districts may establish monthly charges for lease parking within their districts. The City Council may establish by resolution fees for the purchase of parking passes within the Twin Falls townsite.”~~

Section 7: That Twin Falls City Code §9-7-6(C) is amended as follows:

“9-7-6: ILLEGAL PARKING: ...

(C) ~~Unlawful To Park Except Upon Payment Of Fee: It shall be unlawful for any person to park, or permit to be parked, within any off street parking lot any vehicle without paying the leased parking space fee or to park or permit to be parked any vehicle in designated public parking spaces, whether the same space or another space in the same parking lot, for a period of time longer than the maximum designated time limit during the public parking lot operating hours. between the hours of eight o'clock (8:00) A.M. and five o'clock (5:00) P.M., with the exception of the parking lot behind the Paris Company department store bordered by Second Avenue North wherein a validated parking system is in effect. It shall be unlawful for any person to park, or permit to be parked, any vehicle within at the designated parking pass monthly leased parking space during the public parking lot operating hours except for the lessee thereof without properly displaying a valid parking pass.”~~

Section 8: That Twin Falls City Code §9-7-7 is repealed.

Section 9: That Twin Falls City Code §9-7-9 is amended as follows:

“9-7-9: OPERATING HOURS:

Operating hours of off street parking lots shall be between the hours of ~~eight nine thirty~~ eight nine thirty o'clock (8:009:30) A.M. and ~~five three thirty~~ five three thirty o'clock (5:003:30) P.M. Monday through Friday, on every day of the week except on City designated holidays and Sunday, New Year's Day, Memorial Day, Fourth of July, Armistice Day, Thanksgiving and Christmas and on other special days as may be designated by the city council.”

Section 10: That Twin Falls City Code §9-7-10 is amended as follows:

“9-7-10: ENFORCEMENT AND FINES:

If any vehicle is found stopped, standing or parked in any manner in violation of the provisions of this chapter and the identity of the operator cannot be determined, the owner, person, corporation or named lessee in whose name said vehicle is registered, shall be held prima facie responsible for said violation. ~~There is hereby imposed: for the first violation—warning ticket; second offense in the same month—five dollar (\$5.00) fine, or ten dollar (\$10.00) fine if not paid within forty eight (48) hours; third offense within the same month—ten dollar (\$10.00) fine, or twenty dollar (\$20.00) fine if not paid within forty eight (48) hours; fourth offense in the same month—twenty dollar (\$20.00) fine, or forty dollar (\$40.00) fine if not paid within forty eight (48) hours; all additional offenses in the same month fifty dollar (\$50.00) fine, or one hundred dollar (\$100.00) fine if not paid within forty eight (48) hours.~~ There is hereby imposed a thirty five dollar (\$35.00) fine, or fifty dollar (\$50.00) fine if not paid within forty eight (48) hours. Any owner or operator of such vehicle violating said provisions and who fails to pay said fine

within forty eight (48) hours in the collection box or city hall shall be subject to the penalty set forth herein. Fines unpaid for a period of forty five (45) days following issuance may be turned over to a collection agency for collection and shall be subject to an additional twenty five dollar (\$25.00) charge for collection.

Upon the failure of the owner or operator to pay the required fine within forty eight (48) hours, the ~~chief of police or~~ person as designated by the ~~finance director on behalf of the~~ city may, after the giving of written notice, sign a complaint against the owner or operator of the vehicle cited for the violation of this chapter. Written notice to the owner or operator is deemed sufficient if mailed to the last known address of such person. The complaint may be signed after five (5) days from the date of the notice.

Any police officer or person as designated by the city ~~finance director~~ observing a violation of the provisions of this chapter shall leave upon the violating vehicle a traffic ticket, which shall provide the ticket number, date, time, license number, parking lot location, make of vehicle and officer's or designated person's name, ~~and there shall be an envelope attached thereto within which the fine as herein provided may be deposited and~~ ~~€~~The ticket shall notify the owner or operator of the fine increase for failure to pay such fine within the initial forty eight (48) hour period and the penalties for failure to pay the increased fine within the notice period.”

Section 11: That Chapter 8 of Title 9 of the Twin Falls City Code, regulating Parking Meters, is repealed.

Section 12: That this ordinance may be published by summary as follows:

“SUMMARY OF ORDINANCE NO. 3038

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AMENDING TWIN FALLS CITY CODE §9-6-15(A) BY LIMITING LOADING AND UNLOADING TO 20 MINUTES; AMENDING TWIN FALLS CITY CODE §9-6-20 BY THE ADDITION OF SUBSECTIONS (D) AND (E) PROVIDING FOR PARKING LINES AND MARKINGS; AMENDING TWIN FALLS CITY CODE §9-7-2 BY APPLYING OFF STREET PARKING REGULATIONS TO THE ENTIRE TWIN FALLS TOWNSITE; AMENDING TWIN FALLS CITY CODE §9-7-3 PROVIDING FOR PARKING PASS OFF STREET PARKING; AMENDING TWIN FALLS CITY CODE §9-7-4 BY PROVIDING FOR PRIVATE OFF STREET PARKING; AMENDING TWIN FALLS CITY CODE §9-7-5 BY PROVIDING FOR THE ESTABLISHMENT OF PARKING PASS FEES; AMENDING TWIN FALLS CITY CODE §9-7-6(C) BY PROHIBITING PARKING IN SPACES DESIGNATED FOR PARKING PASSES WITHOUT DISPLAYING A PARKING PASS; REPEALING TWIN FALLS CITY CODE §9-7-7; AMENDING TWIN FALLS CITY CODE §9-7-9 BY DESIGNATING OFF STREET PARKING HOURS OF 8:00 AM TO 5:00 PM MONDAY THROUGH FRIDAY; AMENDING TWIN FALLS CITY CODE §9-7-10 BY PROVIDING FOR A FINE OF \$35.00, OR \$50.00 IF NOT PAID WITHIN 48 HOURS; REPEALING CHAPTER 8 OF TITLE 9 OF THE TWIN

FALLS CITY CODE, REGULATING PARKING METERS; AND PROVIDING  
FOR PUBLICATION BY SUMMARY.

The foregoing summary is true and complete and provides adequate notice to the public of the principal provisions of the ordinance.



Fritz Wonderlich, City Attorney”

PASSED BY THE CITY COUNCIL

September 10, 2012.

SIGNED BY THE MAYOR

September 10, 2012.

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MAYOR

ATTEST:

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DEPUTY CITY CLERK

# PARKING LOT LOCATIONS



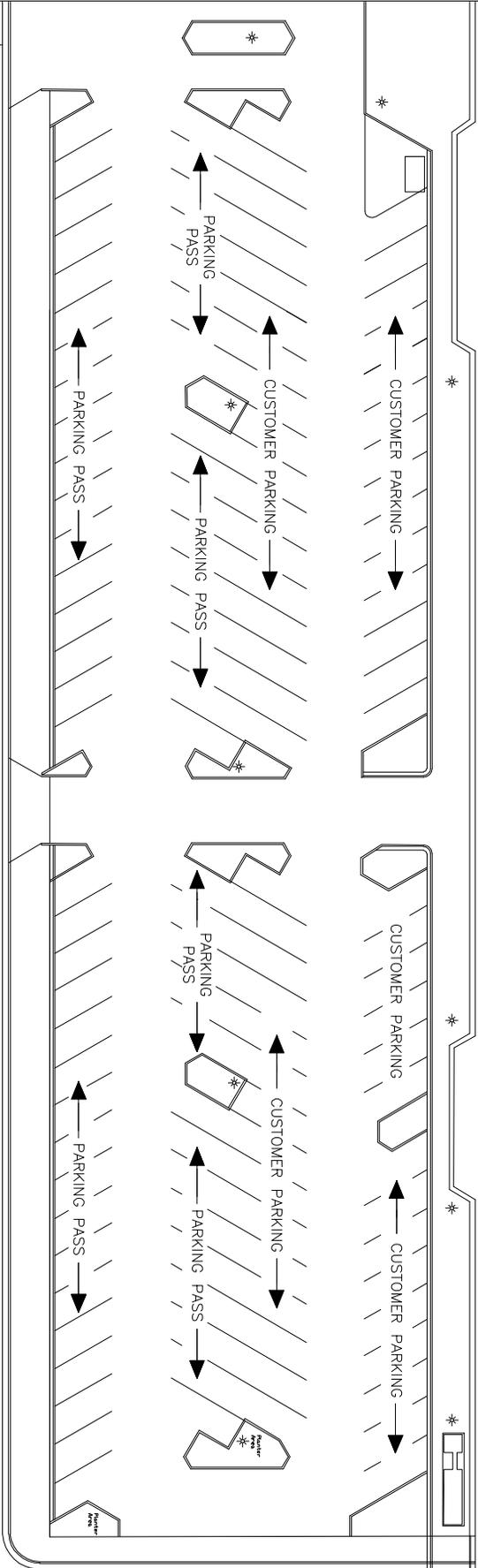
BLACK LOT



CLAUDE BROWN'S

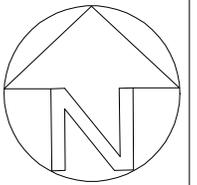
D.L. EVENS BANK PARKING

OBENCHAIN INSURANCE



HANSEN STREET S.

2ND AVE. SOUTH

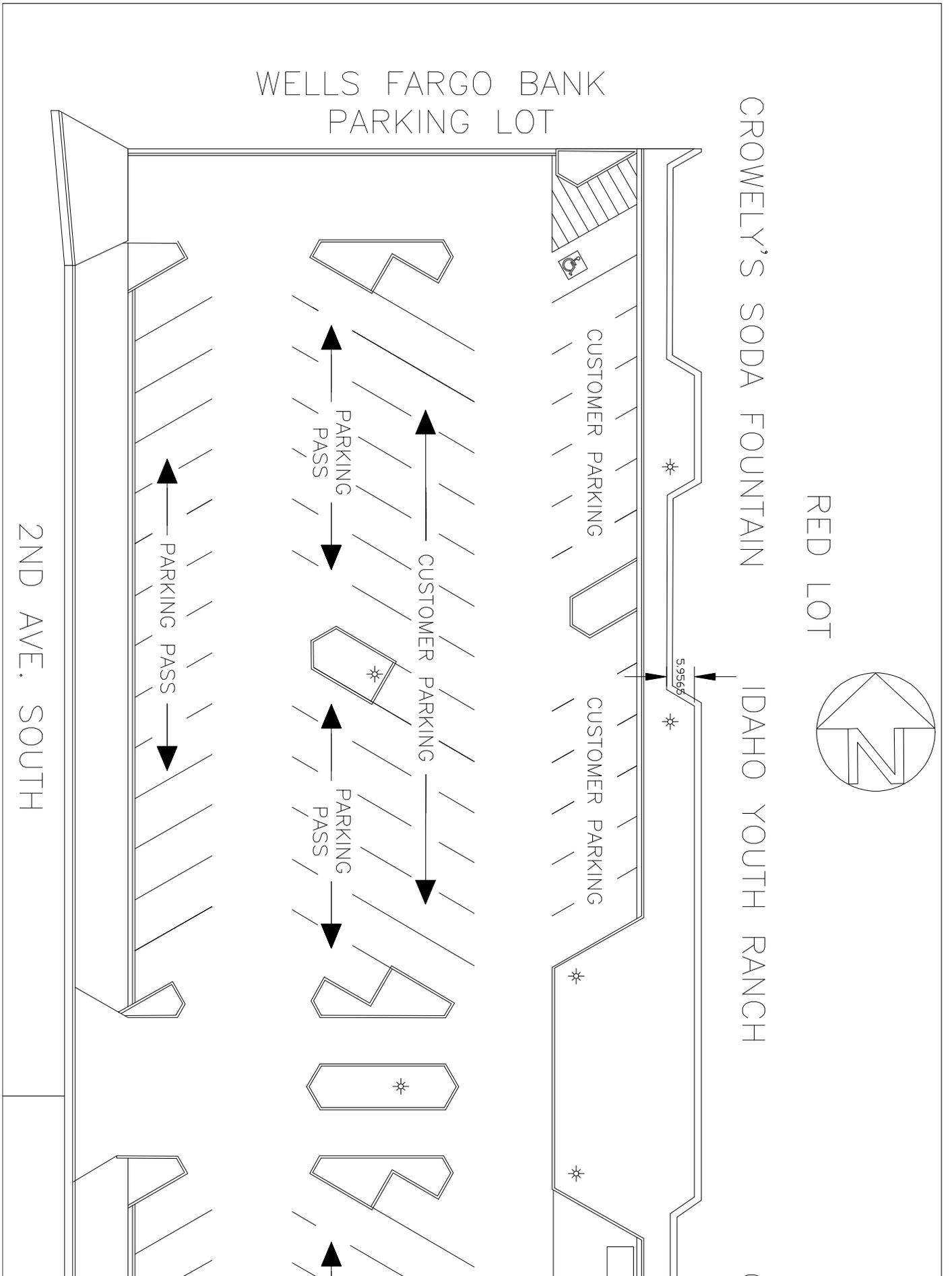


RED LOT

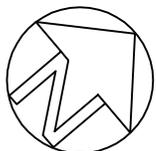
CROWLEY'S SODA FOUNTAIN

IDAHO YOUTH RANCH

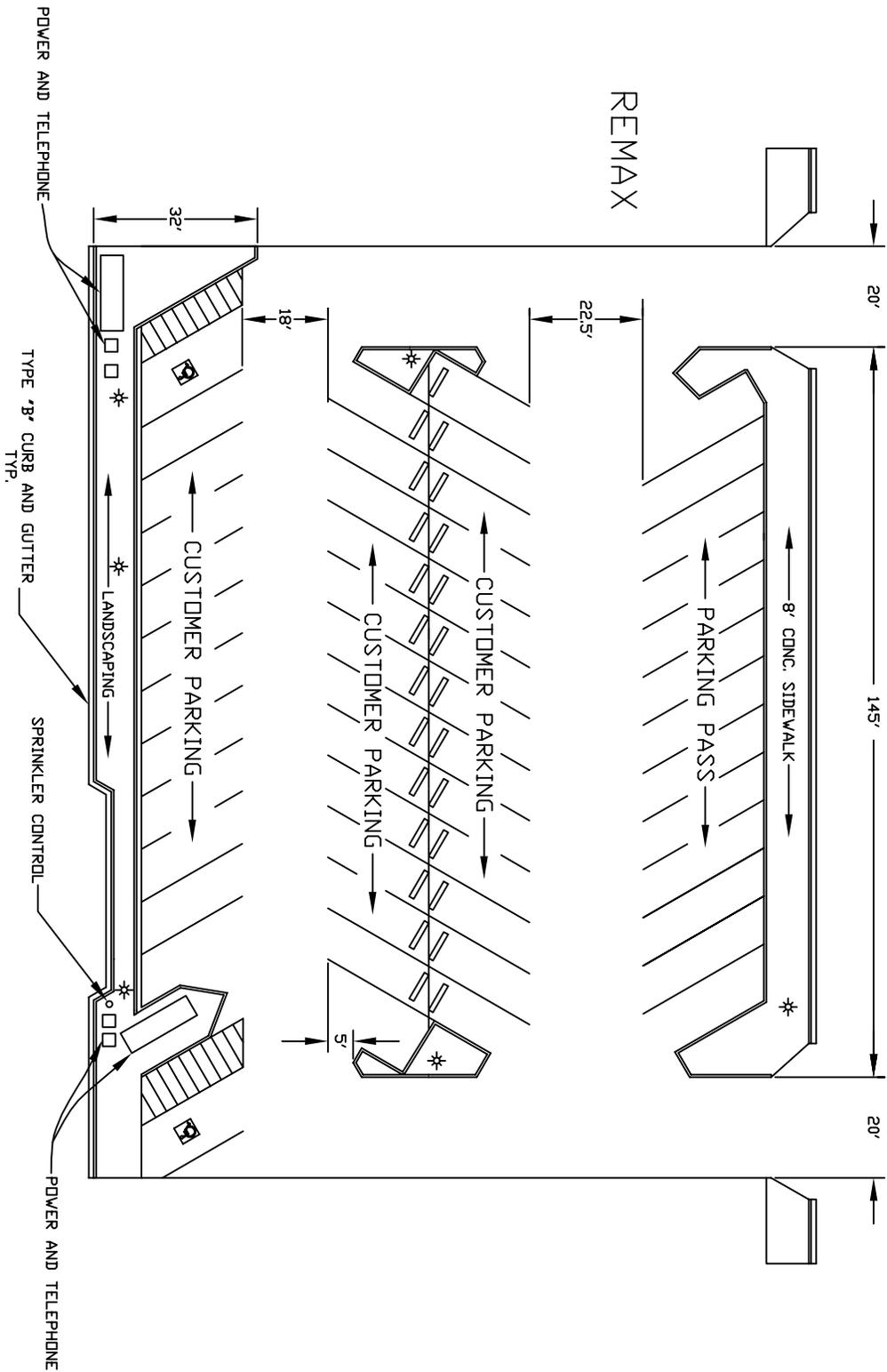
WELLS FARGO BANK  
PARKING LOT



2ND AVENUE NORTH



ORANGE LOT



CLEAR TALK

COBBLE CREEK

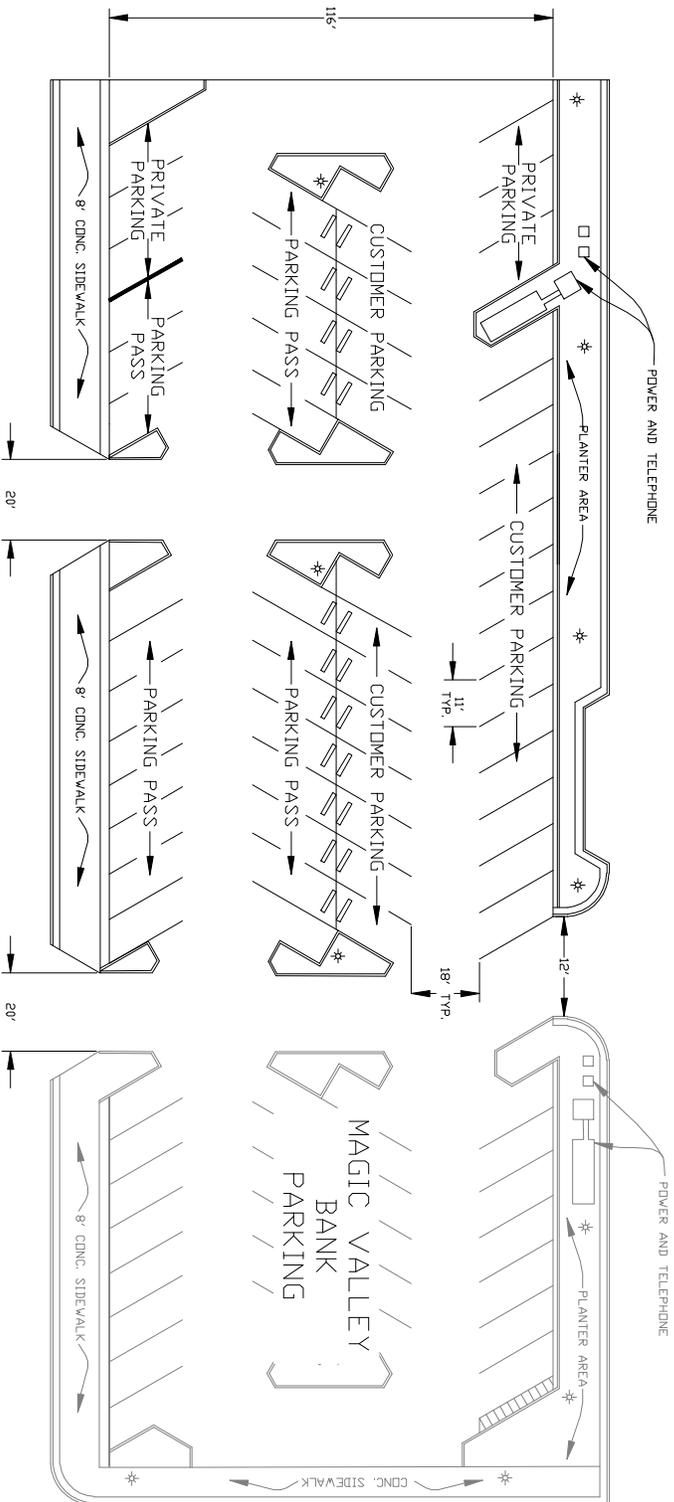


BURGUNDY LOT

RUDY'S

INSPIRED LIVING

ALLEY BLOCK 102



2ND AVENUE WEST

SHOSHONE STREET

HANSEN STREET E.

END AVENUE EAST

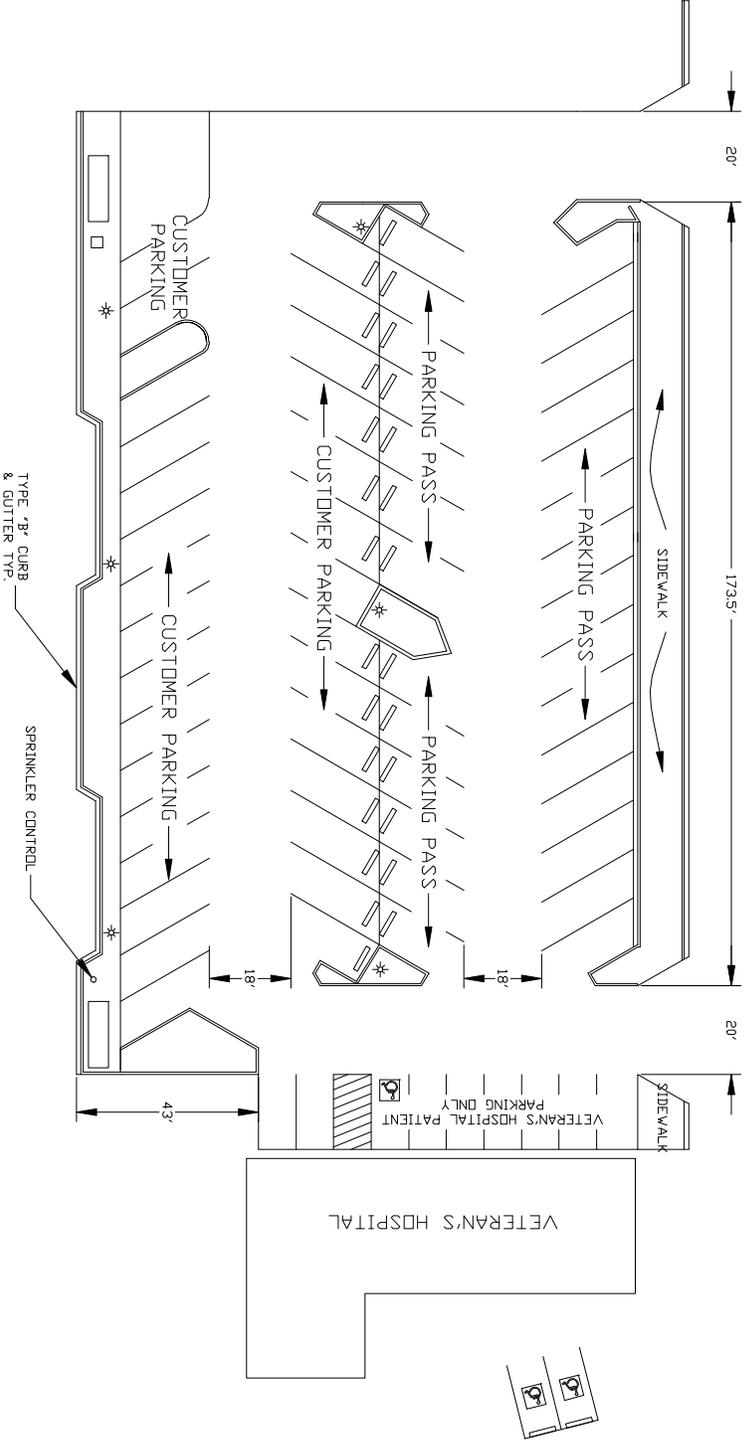


BLUE LOT

BANNER FURNITURE

MUSIC CENTER

ADVANTAGE ARCHERY



104HD STREET E.

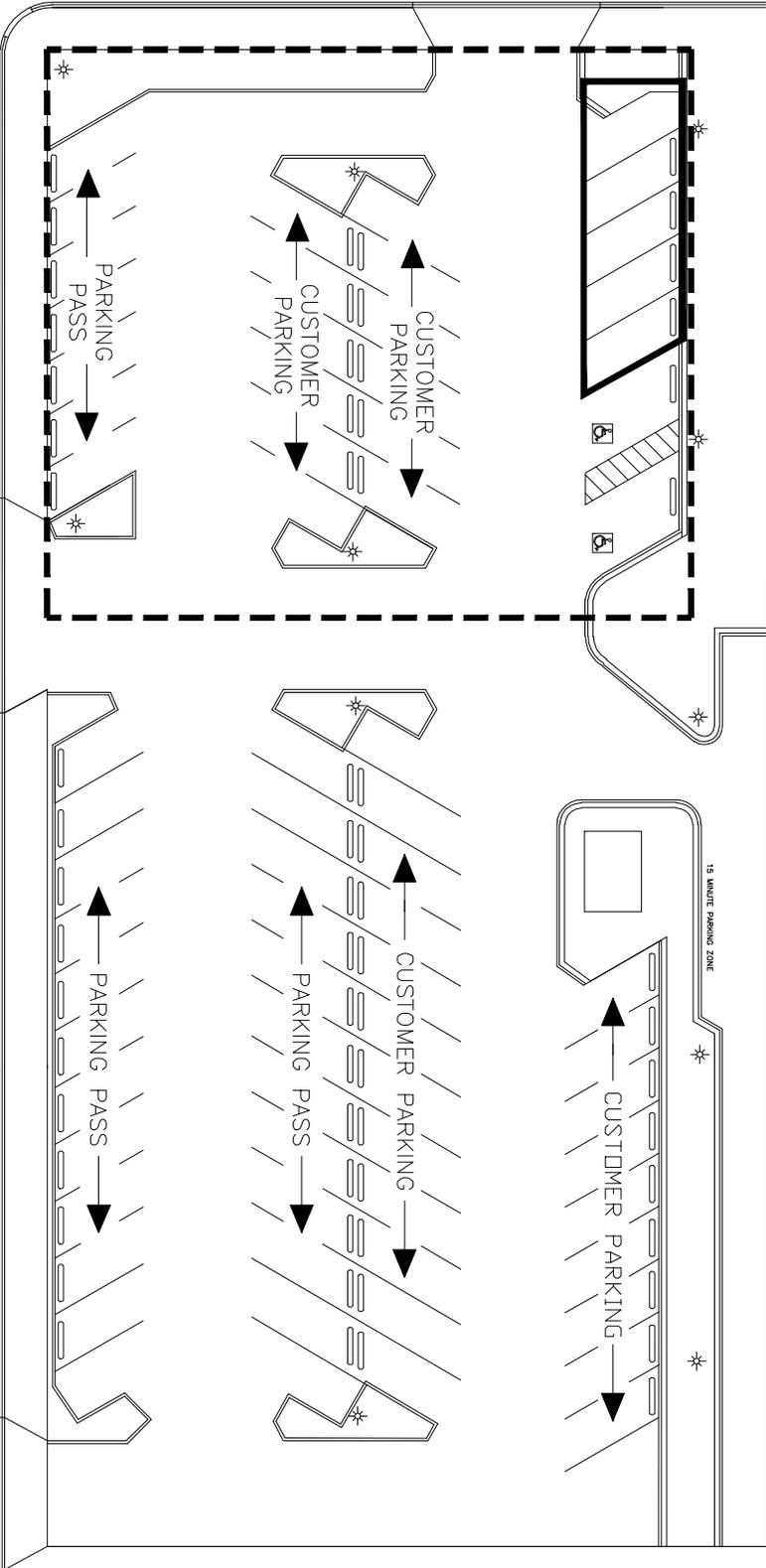
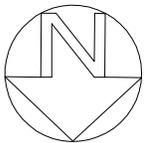
HANSEN ST. EAST

--- URA OWNED  
— PRIVATE SPACES

PLUM NATURAL

FOX FLORAL

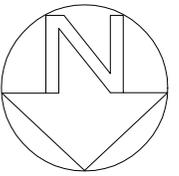
PURPLE LOT



2ND AVE. EAST

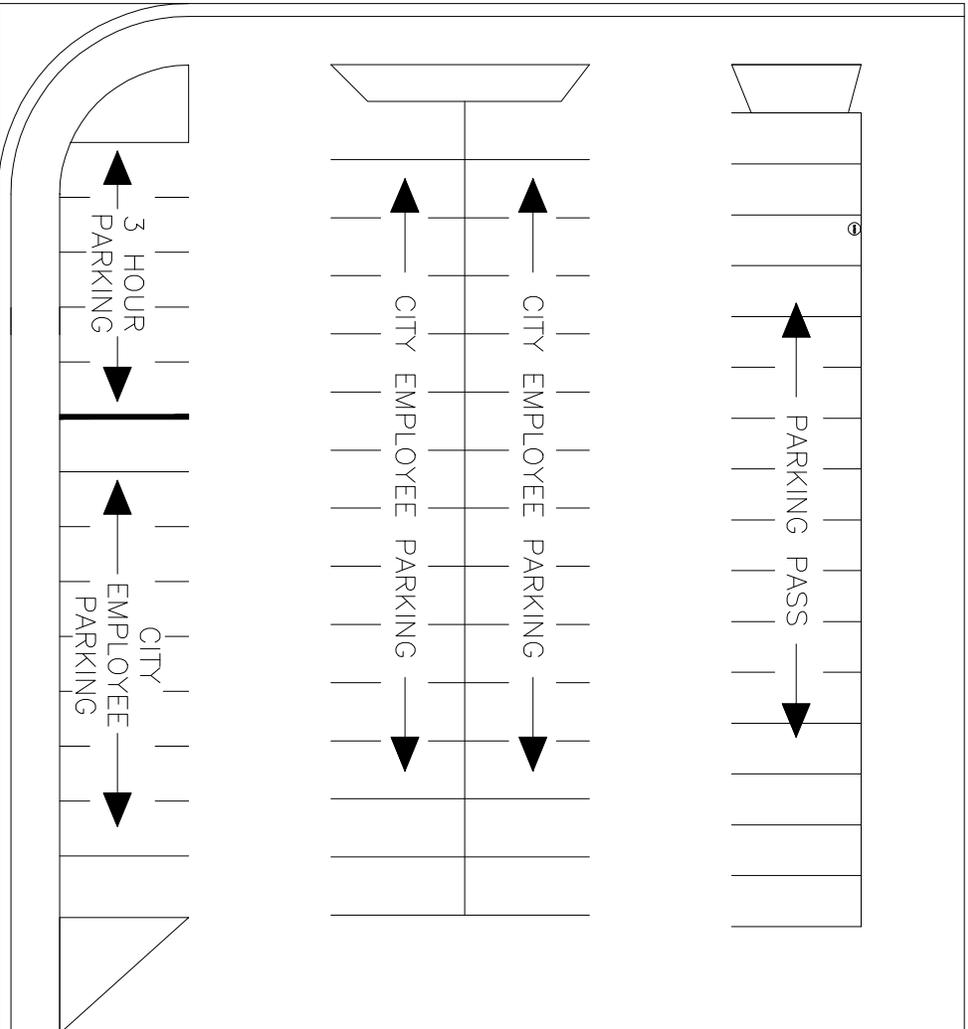
KEY BANK

GREEN LOT



BEACON RESTAURANT

HANSEN ST.



3RD AVE. EAST