

ARTICLE I - DEFINITIONS

RESOLUTION NO. 794

CITY OF POLSON
LAKE COUNTY, STATE OF MONTANA
SEWER SYSTEM REVENUE BOND, SERIES 2000
\$950,000 PRINCIPAL AMOUNT

A RESOLUTION DIRECTING THE ACQUISITION, CONSTRUCTION, AND EXTENSION OF IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY OF POLSON, AUTHORIZING AND DIRECTING THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE AND PAY FOR A PORTION OF THE COSTS OF THE FOREGOING, PROVIDING THE TERMS OF THE BOND AND CREATING SPECIAL FUNDS AND ACCOUNTS AND PLEDGING CERTAIN REVENUES AS THE SOLE SOURCES OF SECURITY AND PAYMENT FOR SUCH BOND.

WHEREAS, the City of Polson in Lake County, Montana (the "City") is authorized by law, including without limitation Title 7, Chapter 7, Part 44, Montana Code Annotated, to construct, improve, rehabilitate and extend its sewer system (the "System"), to prescribe and collect fees and charges for the services provided by the System, to issue and sell revenue bonds to finance and pay for the costs of constructing, improving, rehabilitating and extending the System, to pledge the revenues of the System for the payment of such revenue bonds, and to make and establish other appropriate covenants and conditions with or for the benefit of the holders of such bonds; and

WHEREAS, the United States Department of Agriculture, Rural Development, is authorized to make certain loans to political subdivisions of the State of Montana, including the City; and

WHEREAS, the City desires to avail itself of the opportunity to acquire financing from Rural Development, for the construction, improvement and extension of the System, as and to the extent authorized by Title 7, Chapter 7, Part 44, MCA, and for that purpose the City Council of the City now desires to adopt this Resolution, as permitted by law, authorizing and directing the construction of the project described herein, the issuance of a revenue bond payable solely out of the revenues of the System to finance the costs of such project, and the sale of such bond to Rural Development;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF POLSON, LAKE COUNTY, STATE OF MONTANA, AS FOLLOWS:

Section 1.01. Definitions. In this Resolution, unless a different meaning clearly appears from the context;

"Act" means the Title 7, Chapter 7, Part 44, Montana Code Annotated as amended.

"Bond" means the \$950,000 City of Polson Sewer System Revenue Bond, Series 2000, authorized by this Resolution and any other bonds issued pursuant to this Resolution.

"Bondholder" or "Holder" means any person or entity listed in the registration books of the Treasurer as the holder of a Bond pursuant to Section 3.06 of this Resolution, regardless of whether such Bondholder holds the Bond for his own account or as a fiduciary for another person.

"Bond Repayment Account" means the account created by the Treasurer in the Sewer System Fund pursuant to Section 4.01 of this Resolution and treated in the manner described in Sections 4.04 and 5.04 of this Resolution.

"Bond Repayment Reserve Account" means the account created by the Treasurer in the Sewer System Fund pursuant to Section 4.01 of this Resolution and treated in the manner described in Sections 4.05 and 5.04 of this Resolution.

"City" means the City of Polson, Lake County, Montana.

"City Clerk" means the City Clerk.

"Construction Account" means the account created by the Treasurer in the Sewer System Fund pursuant to Section 4.01 of this Resolution and treated in the manner described in Section 5.02 of this Resolution.

"Date of Closing" means the date on which the Bond is sold and delivered by the City to Rural Development.

"Defeasance" means any manner of advance refunding of a bond as described in Section 149(d) of the IRC.

"Governing Body" means the City Council of the City.

"Gross Revenues" include, without limitation, all gross income and receipts, (a) from the rates, fees, charges and rentals imposed on account of the availability, benefit or use of the System as now constituted or hereafter improved, replaced or extended; (b) from penalties and interest on such rates, charges, fees and rentals; (c) from judgments, orders, executions, foreclosures, and settlements in proceedings to collect delinquent payments for use of the System; (d) from sales of

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property acquired for the System; and (e) from the investment of any of the foregoing.

"IRC" means the Internal Revenue Code of 1986, as amended.

"Monthly Apportionment" means the monthly transfers of money between the accounts created pursuant to this Resolution made pursuant to and in the manner prescribed by Section 5.04 of this Resolution.

"Nationally Recognized Bond Counsel" means a firm of attorneys of nationally recognized standing in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds.

"Net Proceeds" means the amount received by the City as a result of the sale of the Bond, after any deduction for any amount deposited into the Bond Repayment Reserve Account referenced in Section 4.05 but without deduction for any costs incurred by the City except as previously authorized in writing by RD.

"Net Revenues" means, for any period of time, the excess of Gross Revenues over Operating Expenses of the System.

"Operating and Maintenance Account" means the account created by the Treasurer in the Sewer System Fund pursuant to Section 4.01 of this Resolution and treated in the manner described in Section 4.03 and 5.04 of this Resolution.

"Operating Expenses" include, without limitation, the reasonable and necessary administrative expenses of the City relating solely to the System, the costs of the audits and financial reports required by this Resolution; the premiums for insurance and fidelity bonds obtained in connection with the property or operation of the System; the costs of labor, materials, and supplies used for current operation and maintenance of the System; the charges for the accumulation of appropriate reserves, in accordance with sound accounting practices, for the expenses of operating and maintaining the System which are not recurrent monthly but which are reasonably expected to be incurred and paid in the future; legal fees; and all other current expenses, whether paid or accrued, of operating, maintaining, and repairing the System. Operating Expenses shall not include any allowance for depreciation or replacement of capital assets of the System, nor any portion of the salaries or wages paid to any officer or employee of the City except such portion as shall represent reasonable compensation for the performance of duties necessary for the actual operation and maintenance of the System. Operating Expenses do not include interest paid on long term debt.

"Permitted Investments" means the obligations set forth in Section 5.08 of this Resolution that may be purchased with Sewer System Fund moneys.

"Project" means lift station improvements completed in 1999; sludge removal from the lagoons (cells 1 and 2); new aeration system; new outfall line; meter recorder in Riverside Lift Station.

"Project Costs" means those costs which under generally accepted accounting principles are capital costs of the Project, and of such future improvements and extensions of the Project or the System as may be authorized in accordance with law and this Resolution. Project Costs shall include, but are not limited to: payments due for work and materials performed and delivered under construction contracts; architectural, engineering, contract administration, inspection, supervision, fiscal, and legal expenses; the costs of acquiring land and easements or other interests in land; the costs of acquiring and installing equipment in connection with the Project; debt service on interim financing during the period of construction of the Project; reimbursement of any advances made for the foregoing purpose from other City funds and all other expenses incurred in connection with the construction and financing of the Project.

"RD" means the United States Department of Agriculture, Rural Development, its successors and assigns.

"Rebate Amount" means the amount calculated pursuant to Section 5.10 of this Resolution representing excess investment earnings which must be rebated to the United States Treasury.

"Replacement and Depreciation Account" means the account created by the Treasurer in the Sewer System Fund pursuant to Section 4.01 of this Resolution and treated in the manner described in Sections 4.06 and 5.04 of this Resolution.

"Sewer System Fund" means the fund created by the Treasurer pursuant to Section 4.01 of this Resolution.

"Supplemental Resolution" means a resolution adopted by the City pursuant to Article X of this Resolution.

"Surplus Account" means the account created by the Treasurer pursuant to Section 4.01 hereof in the Sewer System Fund and treated in the manner described in Sections 4.07 and 5.04 of this Resolution.

"Surplus Net Revenues" means net revenues available after the Monthly Apportionment to satisfy the requirements of the Bond Repayment Account and the Bond Repayment Reserve Account.

"System" means the sewer system of the City.

"Treasurer" means the Treasurer of the City.

In addition to the foregoing definitions, other terms are defined or described in subsequent sections or subsections of this Resolution and shall, unless the context otherwise requires, have those same meanings at all places in this Resolution and in related documents where those terms appear.

ARTICLE II - AUTHORIZATION OF PROJECT

Section 2.01 Authorization for the Project. The City has applied for and received approval for a loan from RD for \$950,000 for the Project.

The Governing Body finds that construction and operation of the Project is authorized by law, is not contrary to any covenant, agreement, or obligation of the City, and is in the best interests of the residents of the City. The City has received and approved the plans and specifications for the Project and has determined the necessity for the Project.

Section 2.02 Existing Sewer System Revenue Bonds. The City has no existing Sewer System Revenue Bonds.

Section 2.03 Ratification and Repealer. (a) All actions heretofore taken by the City or its officers and agents toward the completion of the Project and the issuance and sale of the Bond (except actions inconsistent with the provisions of this Resolution) are hereby ratified, approved and confirmed.

(b) All provisions of other ordinances and resolutions and all other actions and proceedings of the Governing Body of the City which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended, and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Section 2.04 Approval of Project Expenditures. All expenditures for Project Costs, and obligations therefor, made or incurred by City officials in the course of their duties prior to the date of this Resolution are hereby ratified and confirmed.

It is presently estimated by the Governing Body that the Project Costs will be as follows:

Engineering Design & Inspection	\$243,555
Construction	1,285,754
Administration/Financing & Legal	50,500
Contingency	<u>145,191</u>
Total Cost of Project	\$1,725,000

The Governing Body expects to pay the Project Costs from the following sources of funds:

Community Development Block Grant	\$400,000
Existing City Sewer Funds	\$375,000
RD Purchase of Bond in the amount of	\$950,000

Section 2.05 Compliance with Laws. The construction, operation, and maintenance of the Project and the procurement of professional services, construction services and construction materials shall be undertaken and performed in accordance with all applicable federal, state and local statutes, regulations and ordinances including, but not limited to, Section 504 of the Rehabilitation Act of 1978 (29 U.S.C. 794).

Section 2.06 Benefit, Rates and Charges. The City will impose reasonable rates and charges for the availability and use of the System which will, based upon the reasonable estimates and projections of the City's consulting engineer, be sufficient to pay all expenses of operation and maintenance, to provide for depreciation and repairs of the System, to pay installments of principal and interest on the Bond when due and to build and maintain the required reserves as set forth herein.

Section 2.07 Reimbursement of Expenditures. The Internal Revenue Service has issued Section 1.150-2 of the Treasury Regulations (the "Regulations") dealing with the issuance of tax-exempt bonds, all or a portion of the proceeds of which are to be used to reimburse the issuer for the project expenditures made by the issuer prior to the date of issuance of such bonds. The Regulations generally require that, except for preliminary expenditures not more than 20% of the Project Costs for such things as engineering, surveying and soil testing, issuer make a declaration (no later than 60 days after payment of the original expenditures) of its official intent to reimburse itself for such expenditures out of the proceeds of a subsequently issued borrowing, that the borrowing occur and the reimbursement allocation be made from the proceeds of such borrowing within eighteen months of the original expenditure or the date the project is placed in service, and that the expenditure be a capital expenditure or cost of issuance. The City Council desires to comply with the Regulations in the construction of the Project. The City intends to borrow its construction financing from the Montana Board of Investments "INTERCAP Program" and intends to utilize Bond Proceeds to pay off the INTERCAP Program construction loan at the completion of construction. Except as described above, the City does not expect to reimburse itself from Bond Proceeds for any of its prior expenditures. However, if it does so reimburse itself, then all reimbursed expenditures shall be expenditures authorized to be reimbursed by Section 1.150-2 of the Regulations.

ARTICLE III - AUTHORIZATION AND TERMS OF BOND

Section 3.01 Authorization, Issuance and Sale of Bond. Pursuant to the Act and in order to provide moneys for the construction of the Project, the Governing Body of the City hereby authorizes the issuance and sale of the Bond in the aggregate principal amount of \$950,000 to RD as the original purchaser upon the terms and conditions stated herein.

Section 3.02 Interest Rate. The Bond shall bear interest from its date at the rate permitted and agreed by the City and RD on the unpaid principal balance thereof. The interest rate permitted and agreed shall be the lower of the rate in effect at the time of loan approval by RD or at the Date of Closing. The City will request the lower rate from RD. The calculations of payments on the Bond set forth herein are based on the initial committed interest rate of four and one-half

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percent (4.5%) per annum which is the rate in effect at the time of loan approval with a 20 year term and equal, fully amortized monthly payments.

Section 3.03 Payment Schedule. The principal of and interest on the Bond shall be payable in monthly installments with the first installment due one month from the date of the issuance of the Bond and the remaining payments due on the same day each month during the term of the Bond until the principal of and interest on the Bond has been paid in full. Principal and interest payments, which are presently estimated to be in the amount of \$6,014, based on interest at the rate of four and one-half percent (4.5%) per annum, shall be paid on the monthly installment dates for the 20 year term of the Bond. The final monthly installment may be in such lesser or greater amount as is necessary to pay the balance of principal and interest then remaining due.

Section 3.04 Payments Due on Saturdays, Sundays and Holidays. In any case in which the date on which an installment payment is due shall be a Saturday, a Sunday, a legal holiday, or a day on which banking institutions are authorized by law to close, then such installment payment need not be made on such date, but may be made on the next business day that is not a Saturday, a Sunday, a legal holiday, or a day on which banking institutions are authorized by law to close, with the same force and effect as if made on the date on which the installment payment was due. No penalty shall attach to a payment made pursuant to this provision.

Section 3.05 Prepayment and Redemption. The City may at any time prepay all or any part of the principal plus accrued interest on the Bond. Any such prepayment may be made without penalty or premium. Any prepayment shall be identified as such, shall be applied first to accrued interest and then to unpaid principal, and shall not extend or postpone the due date of any subsequent installment payment on the Bond.

Section 3.06 Negotiability, Transfer and Registration. The Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to RD. The Bond shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Bond shall be valid unless and until (1) the Bondholder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Bond, and (2) the Treasurer, as Bond registrar, has duly noted the transfer on the Bond and recorded the transfer on the Treasurer's registration books. The Treasurer may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. In the event that the City adopts or amends a system of registration as provided in Sections 17-5-1101 through 1123, MCA, such system and any amendments thereto shall be applicable to the Bond except to the extent that such system is inconsistent with this Resolution, in which event the terms of this Resolution shall take precedence. The City shall be entitled to deem and treat the person in whose name a Bond is registered as the absolute owner of the Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the City's liability upon such Bond to the extent of the sum or sums so paid.

Section 3.07 Execution. The Bond shall be executed on behalf of the City by the manual signature of the Mayor of the City and shall be manually countersigned by the Clerk. Any or all of such signatures may be affixed at or prior to the Date of Closing. In the event that any of the officers who have signed the Bond cease to be officers of the City before the Bond is issued or delivered, their signatures shall remain binding upon the City. Conversely, the Bond may be signed by an authorized official who did not hold such office on the date of this Resolution.

Section 3.08 Delivery. The Bond shall be delivered to RD, or its attorney or legal representative on the Date of Closing. The purchase price of the Bond shall be not less than the principal amount thereof plus any interest accruing on the Bond from its date to the Date of Closing.

Section 3.09 Security. The Bond shall be paid solely from the Sewer System Fund, to which fund are pledged the Net Revenues generated by the System.

Section 3.10 Priorities. The Bond shall be secured by and payable out of the Net Revenues of the System without preference or priority over Parity Bonds as described in Section 6.01 hereof. If at any time the Net Revenues on hand in the Sewer System Fund are insufficient to pay the principal and interest then due on all Bonds issued under this Resolution, any and all moneys then available shall be applied to payments then due and overdue in order of the due dates of such payments (earlier-due payments being made before later-due payments), and if available moneys are insufficient to make all payments due on the same date, such moneys shall be applied pro rata first to accrued interest and then to principal.

Section 3.11 Form. The Bond shall be in substantially the following form (with appropriate insertions for dates and amounts as described above):

UNITED STATES OF AMERICA
STATE OF MONTANA
City of Polson
Lake County, Montana
Sewer System Revenue Bond

Series 2000

\$950,000

R-1

KNOW ALL PERSONS BY THESE PRESENTS: The City of Polson (the "City"), a duly organized political subdivision of the State of Montana, acknowledges itself to be indebted to and for value received promises to pay to the order of the United States Department of Agriculture or its registered assignee, solely from the Bond Repayment Account of the City's Sewer System Fund, the principal sum of _____ and No/100 Dollars (\$ _____), plus interest from the date hereof at the rate of _____ percent (____%) per annum on the unpaid balance for the Bond's total term of 20 years. Principal and interest shall be paid in consecutive monthly installments on the _____ day of each month, commencing on _____, 19____, and continuing for the term hereof, subject to the rights and duties of prepayment set forth below. Principal and interest in the amount of _____ and 00/100 Dollars (\$ _____) shall be paid on the monthly installment dates for the term of the Bond. The final monthly installment may be in such lesser or greater amount as is necessary to pay the balance of principal and interest then remaining due. Such installment payments shall be made by check or draft mailed to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond has been issued pursuant to and in full conformity with the constitution and laws of the State of Montana, including without limitation Title 7, Chapter 7, Part 44 of the Montana Code Annotated, and in accordance with Resolution No. _____ of the City, duly adopted on _____, _____, (the "Resolution"). Reference is hereby made to the Resolution for a description of the terms and conditions other than those herein, upon which this Bond is issued and secured.

The Bond has been issued for the purpose of providing part of the funds necessary to pay the costs of constructing, improving, extending, and rehabilitating the sewer system of the City (the "System"). The principal of and interest on the Bond is payable solely for the Net Revenues of the System as defined in the Resolution.

The City may at any time prepay all or any part of the principal, plus accrued interest on the Bond. Any such prepayment may be made without penalty or premium. Any prepayment shall be identified as such, shall be applied first to accrued interest and then to unpaid principal, and shall not extend or postpone the due date of any subsequent installment payment on the Bond.

The City has duly authorized and will forthwith construct and complete the Project as defined in the Resolution. The City will establish and collect reasonable rates and charges for the services afforded by the System of which the Project is a part, and has created a Sewer System Fund into which the Gross Revenues of the System, including all revenues from additions, replacements and improvements to the System subsequently constructed or acquired, will be paid. The Sewer System Fund includes a Bond Repayment Account, into which there shall each month be credited, out of the Net Revenues of the System then on hand, amounts sufficient, with similar credits from prior and subsequent months, to meet all payments of principal of and interest on the Bond as they become due. The Sewer System Fund also includes a Bond Repayment Reserve Account, into which account there shall each month be credited out of the remaining Net Revenues of the System certain additional amounts as provided in the Resolution to establish within ten years from the date hereof and maintain therein a reserve in an amount equal to the annual payment of principal and interest due on the Bond in that year, to be used only to pay the principal of and interest on the Bond as such principal and interest become due. Rates and charges for the use of the System will be made from time to time in amounts sufficient to provide for the prompt payment of the reasonable and current expenses of operation and maintenance of the System and to produce Net Revenues, in excess of such expenses, sufficient to pay the principal of and interest on the Bond and any additional bonds hereafter issued and made payable from said Net Revenues. The revenues of the System will also be kept sufficient to provide for the replacement of the System as it deteriorates. Except in so far as parity bonds are authorized in the Resolution, no obligation will be incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be made expressly subordinate to the lien of the Bond on such Net Revenues.

It is hereby certified that all acts, conditions, and things required by law, resolution, or agreement to be done or to have happened prior to or in connection with the issuance of the Bond have been done or have happened, and that the issuance of the Bond does not violate any constitutional or statutory limitation on bonded indebtedness.

IN WITNESS WHEREOF, the City of _____, acting by and through its City Council, has caused this Bond to be executed in its behalf by the signature of the Mayor countersigned by the signature of the Clerk of the City, and has caused this Bond to be dated as of _____, _____.

SAMPLE

Mayor

Countersigned:
SAMPLE

Clerk

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