

## ORDINANCE NO. 152

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIGGINS, IDAHO, RELATING TO THE CITY'S EXECUTION OF FINANCING AND SECURITY DOCUMENTS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$120,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION OF REAL ESTATE FOR CITY PURPOSES; APPROVING THE OFFER TO PROVIDE FINANCING MADE BY U. S. BANK NATIONAL ASSOCIATION; PROVIDING CERTAIN COVENANTS OF THE CITY; PROVIDING FOR THE EXECUTION OF DOCUMENTS ASSOCIATED WITH THE REAL ESTATE PURCHASE; PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR OTHER MATTERS RELATING THERETO

CITY OF RIGGINS  
Idaho County, Idaho

### REAL ESTATE PURCHASE PROJECT, 2001

BE IT ORDAINED BY THE MAYOR AND MEMBERS OF THE CITY COUNCIL OF THE CITY OF RIGGINS, Idaho County, Idaho, as follows:

WHEREAS, the City Council of City (the "City Council") has determined it to be in the best interests of the residents of the community to purchase certain real property for future use as a public parking facility and other municipal purposes of the City (the "Project");

WHEREAS, U. S. Bank National Association (the "Bank") has made an offer to the City, by letter dated February 26, 2001, to provide financing for the Project;

WHEREAS, the City is prepared to enter into a Property Lease with the Bank for the real property to be acquired, as well as execute other documents necessary to accomplish this financing;

WHEREAS, the City plans to lease the property and finance the acquisition of the Project with the Bank through a Real Estate Lease, provided that at the completion of the payment of the Lease payments by the City to the Bank, the Bank shall deed clear title to the property to the City;

WHEREAS, forms of the Real Estate Lease, Deed of Trust and Assignment of Lease and Security Agreement, and related documents (the "Borrowing Documents") have been prepared for review by the City Council and the Bank;

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF CITY OF RIGGINS, IDAHO, as follows:

Section 1.      **DEFINITIONS**

Bond Year means each one-year period that ends on the date selected by the City. The first and last Bond Years may be short periods. If no day is selected by the City before the earlier of the final payment date of the Real Estate Lease or the date that is five (5) years after the date of execution of the Real Estate Lease, Bond Years end on each anniversary of the date of execution and on the final maturity date of the Real Estate Lease.

Borrowing Documents shall mean the Real Estate Lease, the Deed of Trust and Assignment of Lease and Security Agreement.

City shall mean City of Riggins, Idaho, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Idaho.

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

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

Ordinance means this Ordinance, as adopted by the City Council of City Council members of the City, authorizing the Project and the Real Estate

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

Project shall mean the acquisition of the real property described in Exhibit "A" attached hereto and incorporated herein by reference, and certain improvements thereon or equipment related thereto.

Real Estate Lease shall mean the lease authorized herein in the principal amount of \$120,000, designated "City of Riggins Real Estate Purchase Project Real Estate Lease, 2001."

Section 2.      **ACCEPTANCE OF PROPOSAL TO PROVIDE FINANCING**

The Bank has submitted its proposal to provide financing for the Project as embodied in Exhibit "B" attached hereto and incorporated herein by this reference. The City hereby accepts the terms proposed in Exhibit "B" to provide the financing for the Project.

Section 3.      **APPROVAL OF DOCUMENTS**

Pursuant to applicable law, the forms of the Borrowing Documents are hereby approved and the appropriate officials of the City are authorized to enter into all of the Borrowing Documents and any transactions contemplated thereby. The appropriate officials of the City are hereby authorized to execute the Borrowing Documents and any other documents as may be necessary to effect the transactions contemplated therein, on behalf of the City.

Section 4.      **AGREEMENT TO ACCEPT PROJECT**

The City shall accept title to the Project upon payment of all lease payments under the Real Estate Lease and retirement of the Real Estate Lease; PROVIDED, that the City shall not thereafter be obligated to continue to own or operate the Project if such ownership or operation is determined by the City in its sole discretion, to be uneconomical or otherwise not in the best interests of the City.

Section 5.      **FUNDS**

The City Council hereby authorizes the creation of the following Funds in conjunction with this Project:

A.      Acquisition Fund. The City shall deposit the proceeds received from the Bank into the Acquisition Fund. Moneys in this Fund shall be used to pay the costs of the Project, including the acquisition of the real property, costs of attorneys, engineers and other experts necessary to complete the Project and the costs of issuance related to the Borrowing Documents for the Project.

B.      Lease Fund. The City hereby covenants to deposit into the Lease Fund all revenue necessary, so that when combined with other revenue on deposit in the Lease Fund, there is sufficient money to make all payments required under the Real Estate Lease.



Section 6:      **SPECIAL TAX COVENANTS**

A.      Arbitrage. The City hereby covenants that it will not make any use of the proceeds of the Real Estate Lease or any other funds of the City which may be deemed to be proceeds of such Real Estate Lease pursuant to Section 148 of the Code which will cause the Real Estate Lease to be an "arbitrage bond" within the meaning of said Section. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Real Estate Lease) throughout the term of the Real Estate Lease.

The City hereby represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

B.      Registration. The City hereby further covenants that it will comply with the registration requirements of Section 149(a) of the Code so long as the Real Estate Lease is outstanding.

C.      Private Activity Bonds. The City hereby further covenants that it will not take any action or permit any action to be taken that would cause the Real Estate Lease to constitute a "private activity bond" under Section 141 of the Code.

D.      Private Person Use Limitation. The City hereby covenants that so long as the Real Estate Lease is outstanding, it will not permit:

(1)      More than 10% of the Net Proceeds of the Real Estate Lease to be used for any Private Person Use; and

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

The City further covenants that, if:

(3)      More than 5% of the Net Proceeds of the Real Estate Lease are to be used for any Private Person Use; and

(4)      More than 5% of the principal or interest payments on the Real Estate Lease in a Bond Year are (under the terms of this Ordinance or any underlying arrangement) directly or indirectly: (a) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (b) derived from payments (whether or not made to

the City) in respect of property, or borrowed money, used or to be used for any Private Person Use;

then, (i) any Private Person Use of the Project described in subsection (3) hereof or Private Person Use payments described in subsection (4) hereof that is in excess of the 5% limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the Project, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Real Estate Lease used for the state or local governmental use portion of the Project to which the Private Person Use of such portion of the Project relates.

The City further covenants that it will comply with any limitations on the use of the Project by other than state and local governmental users that are necessary, in the opinion of Bond Counsel, to preserve the tax exemption of the interest on the Real Estate Lease.

E. Private Loan Limitation. The City hereby covenants that so long as the Real Estate Lease is outstanding, it will not permit Real Estate Lease proceeds in excess of the lesser of:

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

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

F. Federal Guaranty Prohibition. The City hereby covenants that so long as the Real Estate Lease is outstanding, it will not take any action or permit or suffer any action to be taken if the result thereof would be to cause the Real Estate Lease to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

G. Tax Covenants; Bond Counsel Opinion. The City shall comply with the provisions of this Ordinance pertaining to the Code unless, in the written opinion of Preston Gates & Ellis LLP, or other nationally recognized Bond Counsel to the City, such compliance is not required in order to maintain the exemption of the interest on the Real Estate Lease from federal income taxation.

## Section 7:      **QUALIFIED TAX-EXEMPT OBLIGATION**

The obligation of the City to pay the Principal Component and Interest Component under the Real Estate Lease are hereby designated by the City as qualified tax-exempt obligations for purchase by financial institutions pursuant to Section 265(b) of the Internal Revenue Code. The City shall coordinate with the Bank to ensure that the sum of the principal amount of tax-exempt obligations issued by the City during calendar year 2001, including said obligations, shall not exceed \$10,000,000.

## Section 8.      **RATIFICATION**

All actions heretofore taken by the City Council, its officers and employees, with respect to the acquisition of the real estate which comprises the Project and the Lease and other related documents and actions approved herein, are hereby ratified and approved, including the amendment of the Bank's offer to provide financing as set forth in Section 2 and Exhibit "A" hereto.

Section 9. REPEALER

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

Section 10. SEVERABILITY

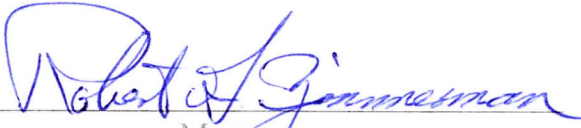
If one or more of the provisions of this Ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then said provision shall be null and void, and shall be deemed separable from the remaining provisions of this Ordinance, and shall in no way affect the validity of the other provisions of this Ordinance.

Section 11. PUBLICATION OF SUMMARY EFFECTIVE DATE

This Ordinance shall be in full force and effect after adoption and publication of this Ordinance, or a summary hereof, in the official newspaper of the City.

PASSED AND ADOPTED under a suspension of the rules by the City Council of the City of Riggins, Idaho, this 26<sup>th</sup> day of February, 2001.

CITY OF RIGGINS, IDAHO

  
Mayor

ATTEST:

  
City Clerk

(SEAL)

CERTIFICATE

I, the undersigned, City Clerk of the City of Riggins, Idaho, DO HEREBY CERTIFY:

1. That the attached Ordinance is a true and correct copy of an Ordinance of the City as adopted at a special meeting held on February 26, 2001 and duly recorded in my office.
2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the adoption of the Ordinance; that all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Riggins, Idaho, this 26<sup>th</sup> day of February, 2001.

CITY OF RIGGINS

  
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City Clerk





Exhibit

(A)

File No. 13405

## SCHEDULE C

Tax #27 being a part of Tracts 4 and 5 of the City of Riggins, Idaho County, Idaho described as:

Commencing at the Northeast corner of Tract 5;

thence N 25°42' E, 66.3 feet to the true point of beginning;

thence continuing N 25°42' E, 25 feet;

thence N 64°18' W, 493.3 feet;

thence S 25°42' W, 164.3 feet;

thence S 64°18' E, 117 feet;

thence N 09°23' E, 42.7 feet;

thence S 64°18' E, 133 feet;

thence S 25°42' W, 41 feet;

thence S 64°18' E, 19.3 feet;

thence N 25°42' E, 20 feet;

thence S 64°18' E, 70 feet;

thence S 25°42' W, 14 feet;

thence S 64°18' E, 16 feet;

thence N 25°42' E, 128.53 feet;

thence S 64°18' E, 150 feet to the true point of beginning.

LESS all that portion of the above described parcel which lies Westerly of the Riggins Irrigation Ditch.

ALSO LESS Tax #130 described as:

Beginning at a point S 25°42' W, 28 feet and S 64°18' E, 108 feet from the Northwest corner of Tract #5, City of Riggins, Idaho County, Idaho;

thence continuing S 64°18' E, 133 feet;

thence N 25°42' E, 40 feet;

thence N 64°18' W, 150 feet;

thence Southeasterly along Riggins Irrigation Ditch to point of beginning, being a part of Tracts 4 and 5 in said City of Riggins, Idaho County, Idaho.



**City of Riggins, Idaho**  
**Lease/Purchase Financing, 2001A**  
**\$120,000**  
**Final Term Sheet**  
**February 26, 2001**

- **Borrower:** The City of Riggins, Idaho (the "City").
- **Facility:** U. S. Bank National Association, (the "Bank") will fund a lease/purchase financing in an amount not exceeding \$120,000 issued by the City (the "Credit Facility").
- **Purpose:** Proceeds of the Credit Facility will be used by the City to finance the acquisition of real estate within the City limits.
- **Terms:** The Credit Facility will be for a 8-year term with substantially equal monthly principal and interest payments. Estimated closing date of March 1, 2001. First payment April 1, 2001 and monthly thereafter through and including March 1, 2009.
- **Rates:** Fixed rate of 5.61% Bank Qualified, Tax Exempt, Partially Prepayable.  
 Accrual basis Actual/360. Rates quoted can be held only for a period of 5 days from date, above.
- **Fee:** A set-up fee of \$250 is due at closing.
- **Prepayment:** The obligations are partially prepayable. Up to 10% of the outstanding principal may be prepaid during each fiscal year without penalty. Non cumulative; cannot be carried forward.
- **Security:** The Credit Facility will be a lease/purchase obligation of the City subject to annual appropriation. The Bank will take a Deed of Trust in the real estate.
- **Conditions:** All rates and terms discussed herein are subject to the Bank's formal credit approval process.
- **Covenants:** Standard covenants regarding maintenance of business operations, adequate insurance coverage, agreement to take all actions necessary to preserve tax exempt status of the obligation, and to collect fees, taxes and other revenues in an amount sufficient to meet all City obligations, including debt service on this obligation.
- **Documentation:** Documentation for the transaction will be prepared by bond counsel (Preston Gates & Ellis LLP) and will include an appropriate authorizing resolution or ordinance, 8038 filing, and attorney opinion that the obligation is a legal, valid, binding, enforceable and properly authorized obligation of the City. The City will designate the obligation as a "qualified tax-exempt obligation" under section 265(b) of the Internal Revenue Code of 1986, as amended, for investment by financial institutions. Bond counsel may wish to rely on counsel to the City for an opinion.
- **Costs:** All costs for the account of the City, including closing costs, transcripts, filing fees, title insurance (if any), Bank legal fees, inspection fees and other usual and customary expenses are the responsibility of the City.

Under Idaho State Law oral commitments to lend are unenforceable. The above terms are a summary and not meant to be all-inclusive of what a final commitment and actual loan documents may look like. Final commitment will be subject to receipt of legal opinion and signed documents by the City.