

ORDINANCE NO. 983

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A WATER REVENUE REFUNDING BOND, SERIES 2006B, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,105,000, FOR THE PURPOSE OF ADVANCE REFUNDING THE CITY'S OUTSTANDING WATER REVENUE BONDS, SERIES 1998; DESCRIBING THE BOND; PROVIDING FOR THE COLLECTION AND DISPOSITION OF REVENUES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; ESTABLISHING FUNDS AND ACCOUNTS; PROVIDING COVENANTS RELATING TO THE BOND; PROVIDING FOR THE SALE OF THE BOND TO AND APPROVING A FORM OF LOAN AGREEMENT WITH THE IDAHO BOND BANK AUTHORITY; PROVIDING FOR RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Ketchum, Blaine County, Idaho (the "City"), is a municipal corporation organized and operating under the laws of the State of Idaho; and

WHEREAS, the City operates and maintains a domestic water supply and distribution system (the "System"); and

WHEREAS, the City now has outstanding a portion of its Water Revenue Bonds, Series 1998 (the "Series 1998 Bonds") issued in the original principal amount of \$3,405,000 pursuant to Ordinance No. 725, adopted on July 1, 1998, the principal amount of \$3,105,000 of which remains outstanding; and

WHEREAS, the City is authorized by the Constitution and laws of Idaho 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; and

WHEREAS, Ordinance No. 725, pursuant to which the Series 1998 Bonds were issued, sold, and delivered, reserves the right of the City to redeem the Series 1998 Bonds maturing on and after September 1, 2009, on any interest payment date on or after September 1, 2008, at a redemption price of par plus accrued interest to the redemption date, and also reserves the right of the City to defease the Series 1998 Bonds prior to maturity in the manner provided in Ordinance No. 725; and

WHEREAS, the Mayor and Council have determined that it is in the best interests of the City and its water ratepayers to advance refund its Series 1998 Bonds in order to achieve an interest rate saving and other beneficial public objectives, and the Mayor and Council desire to issue the refunding bonds of the City for such purpose; and

WHEREAS, the Idaho Bond Bank Authority (the "Authority") is an independent body corporate and politic created and operating pursuant to Title 67, Chapter 87, Idaho Code, as amended (the "Act"), and the Authority is authorized by the Act to issue bonds for the purpose of purchasing municipal bonds, including bonds evidencing loans undertaken by municipalities for purposes authorized by law; and

WHEREAS, Section 67-8722, Idaho Code, authorizes the sale by the City of its water revenue refunding bonds to the Authority at private sale and further authorizes the City to enter into a loan agreement for such purpose, and the Council has determined to issue its water revenue obligations in the form of a single, amortized water revenue refunding bond in an aggregate principal amount not to exceed \$3,105,000 to the Authority.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM, IDAHO, as follows:

Section 1: DEFINITIONS

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

Act means, collectively, Title 50, Chapter 10, Title 57, Chapters 2, 5, and 9, and Title 67, Chapter 87, Idaho Code.

Additional Bonds means any bonds issued pursuant to Section 15 of this Ordinance.

Annual Debt Service means the amount required in a given Fiscal Year of the City for the payment of the principal of and interest on the Bond.

Average Annual Debt Service means the average annual amount required over the term of the Bond from the time of calculation for the payment of the principal of and interest on the Bond.

Authority means the Idaho Bond Bank Authority, an independent body corporate and politic created and operating pursuant to Title 67, Chapter 87, Idaho Code.

Bond means the "City of Ketchum Water Revenue Refunding Bond, Series 2006B," herein authorized to be issued, sold, and delivered in the form of a single, fully registered, amortized revenue bond in a principal amount not to exceed \$3,105,000.

Bond Fund means the "City of Ketchum Water Revenue Bond Fund" referred to in Section 12 of this Ordinance.

Bond Register means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bond.

Bond Registrar means the bond registrar, transfer agent, and authenticating and paying agent appointed and designated in Section 6 of this Ordinance.

City means the City of Ketchum, Blaine County, Idaho.

City Clerk means the Clerk of the City, or other officer of the City who is the custodian of the seal of the City and of the records of the proceedings of the City, or his/her successor in functions, if any.

Council means the City Council of the City.

Escrow Agent means U.S. Bank National Association as escrow agent under the Escrow Agreement.

Escrow Agreement means the Escrow Deposit Agreement between the City and U.S. Bank National Association as Escrow Agent, as authorized in Section 10 of this Ordinance.

Escrow Fund means the Escrow Fund established in the Escrow Agreement.

Estimated Net Revenues means, for any Fiscal Year of the City, the estimated Revenues of the System for such year less the estimated Operation and Maintenance Expenses for such year, based upon estimates prepared by the City Engineer or an independent engineer, or an independent certified public accountant. In computing Estimated Net Revenues, Revenues of the System may be adjusted as necessary to reflect any changed schedule of rates and charges.

Income Fund or Revenue Fund means the Fund described in Section 11 of this Ordinance.

Fiscal Year means the annual fiscal year of the City, currently commencing on October 1 of each year and ending on September 30 of the following year.

Loan Agreement means the loan agreement between the Authority and the City, substantially in the form which is annexed hereto as Exhibit "C," and referred to and authorized in Section 19 of the Ordinance.

Maximum Annual Debt Service means an amount equal to the greatest Annual Debt Service on the Bond for the then-current or any future Fiscal Year of the City.

Mayor means the Mayor of the City, or his/her successor in functions, if any.

Net Revenues means Revenue of the System after the deduction of Operation and Maintenance Expenses.

Operation and Maintenance Expenses or any phrase of similar import means all reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining, and repairing the System or of levying, collecting, and otherwise administering the Net Revenues for the payment of the Bond; and the term includes (except as limited by contract or otherwise limited by law) without limiting the generality of the foregoing:

(1) Engineering, auditing, reporting, legal, and other overhead expenses of the various City departments directly relating and reasonably allocable to the administration of the System;

(2) Fidelity bonds and property and liability insurance premiums pertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining thereto;

(3) Payments to pension, retirement, health, and hospitalization funds and other insurance;

(4) Any taxes, assessments, excise taxes, or other charges which may be lawfully imposed on the City, the System, revenues therefrom, or any privilege in connection with their operation;

(5) The reasonable charges of the bond registrar, fiscal or paying agent, commercial bank, trust bank, or other depository bank pertaining to the Bond issued by the City or pertaining to the Project, if any;

(6) Contractual services, professional services, salaries, other administrative expenses, and the cost of materials, supplies, repairs, and labor, pertaining to the issuance of the Bond and to the ordinary operation of the System; and

(7) All other administrative, general, and commercial expenses.

Ordinance means this Ordinance No. 983, adopted on April 17, 2006.

Registered Owner means the purchaser of the Bond and any subsequent transferee or purchaser of the Bond.

Reserve Fund means the "City of Ketchum Water Revenue Bond Debt Service Reserve Fund" created by Section 13 of Ordinance No. \_\_\_, adopted on April \_\_\_, 2006, and referred to in Section 13 of this Ordinance.

Reserve Requirement means the lesser of (i) the Maximum Annual Debt Service on the Bond, or (ii) 125% of the Average Annual Debt Service on the Bond, not to exceed 10% of the proceeds of the Bond, as provided in Section 148 (d) of the Internal Revenue Code of 1986, as amended.

Revenue of the System means all revenues received by the City from its System and may include, at the discretion of the City, moneys derived from one, all, or any combination of revenue sources pertaining to the System, including, without limitation, rates, charges, rents, fees, and any other income derived from the operation or ownership of, the use of services of, or the availability of or services pertaining to, or otherwise derived in connection with, the System or all or any part of any property pertaining to the System.

Series 1998 Bonds means the City of Ketchum Water Revenue Bonds, Series 1998, issued in the initial aggregate principal amount of \$3,405,000 pursuant to Ordinance No. 725, adopted on July 1, 1998.

Series 2006A Bond means the "City of Ketchum Water Revenue Bond, Series 2006A," issued pursuant to Ordinance No. 981, adopted April 17, 2006.

System, for purposes of this Ordinance, means the domestic water supply and distribution system of the City, as the same now exists, including its assets, real and personal, tangible and intangible, and as it may later be added to, extended, and improved, and shall include buildings, structures, utilities, or other income producing domestic water facilities from the operation of or in connection with which the revenues of the payment of the Bond to be issued hereunder will be derived, and the lands pertaining thereto.

Treasurer means the Treasurer of the City, or his/her successor in functions, if any.

## Section 2: FINDINGS

The Mayor and Council hereby find, determine, and declare:

A. That the City's Series 1998 Bonds can be refunded at a cost saving to the benefit of the City and its water ratepayers; that it is desirable and necessary for the benefit of the City and its water ratepayers to refund the Series 1998 Bonds of the City for the purpose of achieving a cost saving and other beneficial public objectives; and that the net proceeds of the Bonds, together with other lawfully available moneys of the City, shall be used to advance refund the Series 1998 Bonds.

B. That it is the intent of the Mayor and Council to issue the Bonds for the purpose of providing funds in an amount sufficient, together with other lawfully available funds of the City, to advance refund and defease the Series 1998 Bonds.

### Section 3: THE BOND

The Bond, designated "City of Ketchum Water Revenue Refunding Bond, Series 2006B" (the "Bond"), in an aggregate principal amount not to exceed \$3,105,000, is hereby authorized to be issued, sold, and delivered pursuant to the Revenue Bond Act of the State of Idaho, the same being Sections 50-1027 through 50-1042, Idaho Code, and pursuant to Section 67-8722 and Title 57, Chapter 9, Idaho Code.

The Bond shall consist of a single, transferable, amortized revenue bond, substantially in the form annexed hereto as Exhibit "A," shall be issued in fully registered form, shall be dated as of the date of its delivery, and shall bear interest on the unpaid balance at such rate or rates, be payable at such times and in such amounts, and shall mature, as shall be set forth in the Loan Agreement.

### Section 4: EXECUTION

The Bond shall be executed by the manual signature of the Mayor, countersigned by the manual signature of the Treasurer, and attested by the manual signature of the City Clerk, and the seal of the City shall be impressed thereon.

### Section 5: PLACE AND MANNER OF PAYMENT

Both principal of and interest on the Bond shall be payable in lawful money of the United States of America to the Registered Owner thereof, at the address of such Registered Owner as shown on the registration records of the City, or at such other address as shall be designated in writing to the City by the Registered Owner.

### Section 6: BOND REGISTRAR

The Treasurer is hereby appointed as bond registrar, transfer agent and paying agent, and is herein referred to as the "Bond Registrar." The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bond. The Bond Registrar is authorized, on behalf of the City, to carry out all of the Bond Registrar's powers and duties under this Ordinance.

The Bond may be transferred only upon the books for the registration and transfer of bonds (the "Bond Register"), upon the surrender thereof to the Bond Registrar, together with a form of transfer duly executed by the Registered Owner or its attorney duly authorized in writing. Upon the transfer of the Bond, there shall be issued in the name of the transferee or transferees a new fully registered bond or bonds of any authorized denomination or denominations and of the same maturity and interest rate, and of the same aggregate principal amount, as the surrendered bond. The new bond or bonds shall bear the same date as the date of the surrendered bond, but shall bear interest from the immediately preceding interest payment date to which interest has been paid or fully provided for.

This Section is intended to provide the system of registration required by Chapter 9, Title 57, Idaho Code.

Section 7: PRE-PAYMENT; DEFEASANCE

The City shall have the option to prepay the Bond, in whole or in part, in accordance with the prepayment provisions of the Loan Agreement.

In the event that money and/or government obligations, maturing or having guaranteed redemption prices at the option of the owner at such time or times and bearing interest to be earned thereon in such amounts as are sufficient (together with any resulting cash balances) to redeem and retire part or all of the Bond in accordance with its terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on the Bond so provided for, and the Bond and interest accrued thereon shall then cease to be entitled to any lien, benefit, or security of this Ordinance, except the right to receive the funds so set aside and pledged, and the Bond and interest accrued thereon shall no longer be deemed to be outstanding hereunder.

Section 8: CHARGES

The City has established, may from time to time revise, and shall maintain and collect domestic water rates and charges for furnishing the services of the System to its customers, which rates and charges are, and shall continue to be, uniform as to all persons or properties which are of the same class, which rates and charges shall be collected from the users thereof.

Section 9: PLEDGE OF REVENUES

The Net Revenues of the System are hereby pledged for the payment of the Bond, on a parity of lien with the Series 2006A Bond of the City, and shall be used and applied in the order of priority provided in Section 11 of this Ordinance.

The City shall establish, revise, maintain, and collect charges sufficient, with other revenues received, after taking into consideration anticipated delinquencies, to provide Net Revenues equal to not less than 1.25 times the average annual debt service on the Bond, the Series 2006A Bond, and any Additional Bonds issued in accordance with Section 15 of this Ordinance.

Section 10: FUNDS AND ACCOUNTS - REDEMPTION OF REFUNDED BONDS

A. Establishment of Funds and Accounts. The following funds and accounts are created or confirmed with respect to the Bond.

- (1) Income Fund.
- (2) Bond Fund.
- (3) Reserve Fund.
- (4) Escrow Fund, to be held by the Escrow Agent.

B. Delivery of Bond; Application of Proceeds. The Treasurer is hereby instructed to make delivery of the Bond to the Authority and to receive payment therefor in accordance with the terms of the Loan Agreement and to deposit the proceeds of sale into the Escrow Fund, together with other funds of the City, in an amount sufficient to defease the Refunded Bonds, to be used as described in Sections 10(C) and 10(D) of this Ordinance.

C. Approval of Escrow Agreement; Deposits into Escrow Fund.

- (1) The Escrow Agreement, in substantially the form set forth in Exhibit "C" which is annexed hereto and by



reference incorporated herein, with such changes, omissions, insertions, and revisions as the Mayor shall approve, is hereby authorized, and the Mayor and Clerk shall sign such Escrow Agreement, which signature shall evidence such approval. The Mayor and the Clerk are, and each of them is, hereby authorized to do or perform all such acts as may be necessary or advisable to comply with the Escrow Agreement and to carry the same into effect.

(2) The portion of the proceeds of the sale of the Bond specified in Section 10(B) hereof, shall simultaneously with the delivery of the Bond be invested or reinvested (except for any amount to be retained as cash) and the obligations in which such moneys are so invested and any remaining cash shall be deposited in trust with the Trustee in accordance with the provisions of the Escrow Agreement.

D. Redemption of Series 1998 Bonds; Pledge, Etc. of Escrow Fund.

(1) The Series 1998 Bonds maturing on and after September 1, 2009, are hereby irrevocably called for redemption on September 1, 2008. Notice of such redemption shall be given as provided in Ordinance No. 725, adopted on July 1, 1998, pursuant to which the Series 1998 Bonds were issued. The Series 1998 Bonds are being redeemed at a redemption price of par plus accrued interest to the date of redemption.

(2) Moneys in the Escrow Fund shall be utilized exclusively for the purpose of (i) paying the interest on the Series 1998 Bonds, as the same falls due, through and including September 1, 2008; and (ii) paying the maturing principal of the Series 1998 Bonds, as the same falls due, through September 1, 2008, and, (iii) on September 1, 2008, paying and redeeming the outstanding principal of the Series 1998 Bonds in full.

(3) Moneys in the Escrow Fund shall be invested, until needed for the purposes of the Escrow Fund, in cash and Government Obligations, as permitted in the Escrow Agreement. It is hereby found and determined by the City, pursuant to Section 57-504, Idaho Code, that moneys in the Escrow Fund, together with other funds of the City pledged to the payment of the Series 1998 Bonds, will be sufficient to pay, when due, pursuant to stated maturity or call for redemption, the principal of and interest due and to become due on the Series 1998 Bonds, and provision has been made in the Escrow Agreement for the refunding of the Series 1998 Bonds.

(4) Any moneys remaining in the Escrow Fund and not needed for refunding of the Series 1998 Bonds shall be applied to pay any costs of issuance of the Bond that remain unpaid, if any, and any moneys remaining thereafter may be used by the City for any lawful purpose.

(5) It is hereby found and determined that, upon compliance by the City and the Escrow Agent with the foregoing provisions of this Section 10(D), adequate provision shall have been made for the payment of the Series 1998 Bonds.

#### Section 11: THE INCOME FUND

There has heretofore been created, by Ordinance No. 725, adopted on July 1, 1998, the "Revenue Fund," which is hereby designated the "Income Fund" (the "Income Fund"), which shall be maintained by the Treasurer and into which the Revenue of the System shall be deposited immediately upon its receipt.

A. Use of Revenues. The Revenue of the System shall be used for the payment of the following obligations in the following order of priority:

(1) First Charge and Lien: The costs of Operation and Maintenance Expenses.

(2) Second Charge and Lien: The principal of and interest on the Bond, the Series 2006A Bond, and any Additional Bonds, by payment into the Bond Fund as provided in Section 12 of this Ordinance.

(3) Third Charge and Lien: To maintain the Reserve Fund referred to Section 13 of this Ordinance; and

(4) To administer surplus funds.

B. Interest Earnings. Interest earnings on deposits in the Income Fund shall remain in and be used for the purposes of the Income Fund.

C. Surplus Funds. Funds remaining in the Income Fund after having been applied to designated funds for the purposes provided in this section shall constitute surplus funds and may be used for the purposes set forth in Section 14 of this Ordinance.

#### Section 12: THE BOND FUND

There has been created, by Section 12 of Ordinance No. 981, adopted on April 17, 2006, the "City of Ketchum Water Revenue Bond Fund" (the "Bond Fund"), which shall be maintained by the Trustee and into which shall be deposited by the City, from the Net Revenues of the System, in addition to all deposits required by Ordinance No. 981, the following amounts:

A. Each semiannual installment of interest and each annual installment of principal payable on the Bond shall be payable into the Bond Fund from the Income Fund not less than fifteen (15) days prior to each payment date, and paid from the Bond Fund to the Registered Owner on or before each payment date. The moneys herein allocated shall be used solely to pay currently maturing installments of principal of and interest on the Bond.

B. If the City for any reason shall fail to make such deposit, then an amount equal to the deficiency shall be deposited into the Bond Fund from the Reserve Fund, described hereinafter.

#### Section 13: RESERVE FUND

A. Deposits. There has heretofore been created, by Ordinance No. 981, adopted on April 17, 2006, a special fund known as the "City of Ketchum Water Revenue Bond Debt Service Reserve Fund" within the Bond Fund (the "Reserve Fund"), which shall be maintained by the Treasurer so long as the Bond remains outstanding, into which shall be deposited, from proceeds of the Bond, in addition to any amounts required by Ordinance No. 981, the amount of the Reserve Requirement, which amount shall be maintained as a debt service reserve fund for the Bond until the Bond has been paid in full.

B. Deficiencies or Withdrawals. Whenever any moneys are withdrawn from the Reserve Fund to pay the principal of or interest on the Bond, or if a deficiency exists therein, the amount so withdrawn or the amount of such deficiency shall be restored by deposits from Net Revenues, as soon as possible, but not later than one (1) year from the date of the drawing, until the full amount of the Reserve Requirement has been restored.

#### Section 14: SURPLUS FUNDS

Funds remaining in the Income Fund after having been applied for the purposes provided in Section 11A of this Ordinance shall constitute surplus funds and may be used for any of the following purposes:

A. To pay the costs of unusual or extraordinary maintenance of or repair to the System;

B. To pay the principal of and interest on any subordinate lien obligations which may have been issued to provide water facilities in or for the City;

C. To improve, extend, enlarge, or replace any water facilities;

D. To acquire or construct additional water facilities in or for the City;

E. To call or redeem prior to their fixed dates of maturity any Bond, parity bonds, or subordinate lien obligations issued to provide water facilities for the City; and

F. For any other lawful purpose.

Section 15: ADDITIONAL BONDS OR OTHER OBLIGATIONS

A. Limitation Upon Issuance of Parity Obligations.  
Nothing contained in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of Additional Bonds or other additional obligations payable from the Net Revenues on a parity with, but neither prior nor superior to, the lien of the Bond herein authorized; provided, however, that before any such Additional Bonds or other additional parity obligations are authorized or actually issued:

(1) The City is not, and has not been, in default as to any payments required by the provisions of this Ordinance for a period of not less than twelve (12) months immediately preceding the issuance of such Additional Bonds or other additional parity obligations.

(2) The Net Revenues of the System for the past twelve (12) consecutive months immediately preceding the year of the issuance of such Additional Bonds shall have been sufficient to pay the Operation and Maintenance Expenses of the System for said past twelve (12) months, and, in addition, sufficient so that the Net Revenues for such preceding year equal an amount representing at least 125% of the annual principal and interest requirements of the outstanding Bond, the Series 2006A Bond, and any other obligations of the City payable from the Net Revenues of the System.

(3) The Estimated Net Revenues of the System for the twelve-month period immediately succeeding the issuance of the bonds or other obligations proposed to be issued will be not less than 125% of the annual principal and interest requirements of the Bond, the Series 2006A Bond, and any

other obligations of the City payable from the Net Revenues of the System, plus the average annual principal and interest requirements of the Additional Bonds or other obligations proposed to be issued.

(4) A written certification by the City engineer or an independent engineer, or independent certified public accountant, if requested, that the 125% Net Revenue requirement of subsection (2) above, and the 125% Estimated Net Revenues requirement of subsection (3) above, have been satisfied, shall be obtained and filed with the City, which certification shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell, and deliver said Additional Bonds or other additional obligations on a parity with the Bond authorized herein.

(5) The foregoing limitations, or any of them, may be waived or modified by the written consent of the Registered Owner of not less than 75% of the principal amount of the Bond then outstanding.

B. Parity Bonds to Complete Project. In the event that the proceeds of the Bond provided for in this Ordinance are insufficient to complete the Project, then parity bonds or other obligations may be issued to complete the Project, and the restrictions set forth in this Section pertaining to the issuance of parity bonds shall not apply.

C. Subordinate Lien Bonds. No provision of this Ordinance shall be deemed to limit or restrict the power of the City to issue bonds, notes or warrants, or to make pledges of the revenues which shall be subordinate as to the lien of the Bond and which shall provide for compliance with the current provisions hereof prior to the application of any funds to said subordinate purpose.

D. Refunding. The restrictions with respect to the issuance of parity obligations shall not apply if such additional parity bonds proposed to be issued are for the sole purpose of refunding outstanding water revenue bonds.

#### Section 16: INVESTMENTS

Surplus funds in any of the Funds set forth in this Ordinance may be invested in securities as permitted by law.

#### Section 17: GENERAL COVENANTS

For the protection and security of the Bond, it is covenanted and agreed to and with the Registered Owner of the

Bond from time to time, that the City will perform the following covenants:

A. Complete Project. It will complete the construction of the Project with all practical dispatch and in a sound and economical manner.

B. Operate System. It will operate the System in an efficient and economical manner and prescribe, revise, and collect such charges in connection therewith so that the services, facilities, and properties of the System may be furnished at the lowest possible cost consistent with sound economy and prudent management.

C. Good Repair. It will operate, maintain, preserve, and keep the System and every part hereof in good repair, working order, and condition.

D. Preserve Security. It will preserve and protect the security of the Bond and the rights of the Registered Owner thereof.

E. Collect Revenues. It will collect and hold in trust the revenues and other funds pledged to the payment of the Bond and apply such revenue or other funds only as provided in this Ordinance.

F. Service Bond. It will pay and cause to be paid punctually the principal of the Bond and the interest thereon on the date or dates and at the place or places and in the manner mentioned in the Bond, and in accordance with this Ordinance.

G. Pay Claims. It will pay and discharge any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the Revenue of the System, or any part of said Revenue of the System, or any funds in the hands of the Treasurer, prior or superior to the lien of the Bond or which might impair the security of the Bond, to the end that the priority and security of the Bond shall be fully preserved and protected.

H. Encumbrances. It will not mortgage or otherwise encumber, sell, lease, or dispose of the System or any part thereof, nor enter into any lease or agreement which would impair or impede the operation of the System or any part thereof necessary to secure adequate revenues for the payment of the principal of and interest on the Bond, nor which would otherwise impair or impede the rights of the Registered Owner of the Bond with respect to such revenues of the operation of the System without provisions for the retirement of the Bond then outstanding from the proceeds thereof.

I. Insurance. It will procure and keep in force insurance upon all buildings and structures of the System and the machinery and equipment therein, which are usually insured by entities operating like property, in good and responsible insurance companies. The amount of the insurance shall be such as may be required to adequately protect it and the Registered Owner of the Bond from loss due to any casualty, and in the event of any such loss, the proceeds shall be used to repair or restore the System or for the payment of the Bond issued under this Ordinance.

J. Fidelity Bonds. It will procure suitable fidelity bonds covering all of its officers and other employees charged with the operation of the System and the collection and disbursement of revenues therefrom.

K. Engineers. It will employ consulting engineers of acknowledged reputation, skill, and experience in the improvement and operation of the System for any unusual or extraordinary items of maintenance, repair, or betterments as shall be required from time to time, all reports, estimates, and recommendations of such consulting engineers to be filed with the Clerk and furnished to the Registered Owner of the Bond issued hereunder, upon request.

L. Accounts. It will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System, and it will furnish complete operating and income statements upon request.

M. Delinquencies. It will not furnish water service to any customer whatsoever free of charge, and it shall not later than sixty (60) days after an account becomes delinquent, take such legal action as may be reasonable to enforce collection of any collectible delinquent account.

#### Section 18: SPECIAL COVENANTS

The City further covenants and agrees:

A. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the Bond, and any serial bonds to which it may be converted, shall be issued and remain in fully registered form in order that interest thereon be excluded from gross income of the owner or owners for federal income tax purposes. The City covenants and agrees that it will take no action to permit the Bond, or any serial bonds to which it may be converted, to be issued in or converted to bearer or coupon form.

B. None of the proceeds of the Bond will be used, directly or indirectly, (i) to make or finance loans to persons or (ii) in any trade or business carried on by any person (other than as a member of the general public). For purposes of the preceding sentence, the term "person" does not include a government unit other than the United States or any agency or instrumentality thereof, and the term "trade or business" means any activity carried on by a person other than a natural person. The City further covenants and agrees to take no action which would cause the Bond to be a "private activity bond," nor will it omit to take any action necessary to prevent the Bond from becoming a "private activity bond," within the meaning of Section 141 of the Code.

C. The Mayor, Clerk, and Treasurer, and other appropriate officials of the City, or any one or more of such officials, as may be appropriate, are each hereby authorized and directed to execute, on behalf of the City, such certificate or certificates as shall be necessary to establish that the Bond is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated thereunder, and to establish that interest on the Bond is not and will not become includable in the gross income of the owner(s) of the Bond under the Code and applicable regulations. The City covenants and agrees that no use will be made of the proceeds of the Bond, or any funds of the City which may, pursuant to Section 148 of the Code and applicable regulations, be deemed to be proceeds of the Bond, which would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The City further covenants to comply throughout the term of the Bond with the requirements of Section 148 of the Code and the regulations promulgated thereunder in order to prevent the Bond from becoming an "arbitrage bond."

D. The City will comply with the information reporting requirements of Section 149(e) of the Code.

E. None of the proceeds of the Bond will be used to reimburse the City for capital expenditures made prior to the date of delivery of the Bond unless the City, not later than 60 days after the payment of such expenditure, shall have adopted an official intent resolution as provided by Section 1.150-2 of the Treasury Regulations.

#### Section 19: LOAN AGREEMENT

The Loan Agreement, substantially in the form annexed hereto as Exhibit "D," is hereby approved. The Mayor and City Clerk, or such officer's designee, are each hereby authorized and directed, on behalf of the City, to execute and attest, respectively, and to deliver the Loan Agreement; provided,



however, that (i) the term of the Loan Agreement shall end no later than September 15, 2027; (ii) the principal amount set forth in the Loan Agreement shall not exceed \$3,105,000; and (iii) the true interest cost of the Bond as set forth in the Loan Agreement shall not exceed 4.65%. The sale of the Bond to the Authority in accordance with the Loan Agreement is hereby approved. The City shall comply with all terms and provisions of the Loan Agreement, and, in the event that any provision of this Ordinance or the Bond is inconsistent with the provisions of the Loan Agreement, the provisions of the Loan Agreement shall control.

#### Section 20: AMENDMENTS

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

(1) To add to the covenants and agreements of the City in this Ordinance, other covenants and agreements thereafter to be observed, which shall not adversely affect the interest of the Registered Owner of the Bond, or to surrender any right or power herein reserved.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting, or supplementing any defective provisions contained in this Ordinance, or any ordinance authorizing future bonds in regard to matters or questions arising under such ordinances as the Council may deem necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect, in any material respect, the interest of the Registered Owner of the Bond.

Any such supplemental ordinance may be adopted without the consent of the Registered Owner of the Bond at any time outstanding, notwithstanding any of the provisions of subsection B of this Section.

B. With the consent of the Registered Owner of not less than 75% in aggregate principal amount of the Bond at the time outstanding, the Council may adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) Extend the fixed maturities of the Bond, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, if applicable, without the consent of the Registered Owner of the Bond so affected; or

(2) Reduce the aforesaid percentage of the Registered Owner required to approve any such supplemental ordinance.

It shall not be necessary for the consent of the Registered Owner under this subsection B to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

C. Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations of the City under this Ordinance and the Registered Owner of the Bond outstanding hereunder shall thereafter be determined, exercised, and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

D. Any Bond executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new bonds so modified as to conform, in the opinion of the Council, to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owner of the Bond then outstanding, upon surrender for cancellation of the Bond.

#### Section 21: VALIDITY OF ISSUANCE

The Bond is issued pursuant to the Idaho Revenue Bond Act, being Idaho Code Sections 50-1027 through 50-1042. This recital is conclusive evidence of the validity of the Bond and the regularity of its issuance.

#### Section 22: REGISTERED OWNER'S REMEDIES - RECEIVER

By action or suit in equity, the Registered Owner or subsequent owners of the Bond may, in the event of a material violation of any of the foregoing covenants, cause the

appointment of a receiver, which receiver may enter and take possession of the System and any Net Revenues for the payment of the Bond, prescribe fees to be derived from the System, and collect, receive, and apply all Net Revenues of other moneys pledged for the payment of the Bond in the same manner as the City might do in accordance with the obligations of the City. In addition, the Registered Owner shall have the remedies set forth in the Loan Agreement.

Section 23: ORDINANCE A CONTRACT

The provisions of this Ordinance shall constitute a contract between the City and the Registered Owner so long as the Bond hereby authorized remains unpaid.

Section 24: SEVERABILITY

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond.

Section 25: REPEALER

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

Section 26: AUTHORIZATION

The Mayor, City Clerk, and City Treasurer, or any one of such officers, as may be appropriate to the circumstances, are hereby authorized to execute, on behalf of the City, the Bond and all such additional documents as may be necessary to effect the sale and delivery of the Bond.

Section 27: PUBLICATION

This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto as Exhibit "B," shall be published once in the official newspaper of the City, and shall take effect immediately upon passage, approval, and publication.

DATED this 17th day of April 2006.

CITY OF KETCHUM  
Blaine County, Idaho

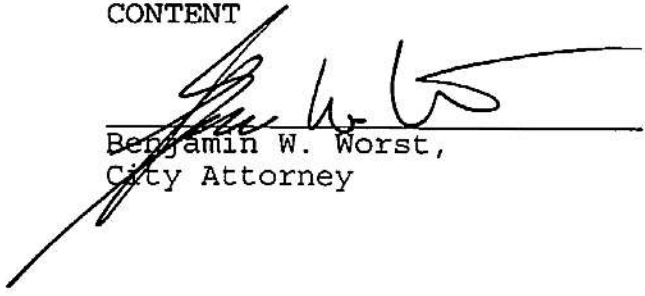
By   
Randy Hall, Mayor

ATTEST:

  
Sandra E. Cady, City Clerk

( S E A L )

APPROVED AS TO FORM AND  
CONTENT

  
Benjamin W. Worst,  
City Attorney