

ORDINANCE NO. 2006-11

AN ORDINANCE RELATING TO THE SEWER AND WASTEWATER TREATMENT SYSTEM OF THE CITY OF ST. ANTHONY, FREMONT COUNTY, IDAHO; AUTHORIZING THE ISSUANCE OF SEWER REVENUE BONDS, SERIES 2006B; PROVIDING FOR THE COLLECTION AND DISPOSITION OF THE REVENUES DERIVED FROM SAID SYSTEM; PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND PROVIDING THE EFFECTIVE DATE HEREOF.

WHEREAS, the City of St. Anthony (herein the "City"), Fremont County, State of Idaho, is a municipal corporation duly organized and existing under the general laws of the State of Idaho; and

WHEREAS, the City now owns and operates, or intends to do so, and does hereby determine that it shall continue to operate a sewer and wastewater treatment system as a utility for the benefit of the City (herein the "System"); and

WHEREAS, the System has been and is in need of renovation, improvement, extension, upgrading and betterment; and

WHEREAS, the City Council (herein the "Council") has determined and does hereby determine that the interest of the community and the public interest and necessity require the immediate improvement of the System by making the following improvements and acquisitions: the sewer collection system will be improved by replacement of approximately sixty percent (60%) of all wastewater gravity collection lines including the main trunk line to the treatment plant, replacement of one lift station, rehabilitation of two other lift stations, and purchase of a jetter truck to maintain all gravity collection lines. Necessary improvements to the wastewater treatment facility include rehabilitation of the aerated primary lagoon, rehabilitation of the hydro power plant, replacement of the existing chlorine disinfection system, installation of a bypass line for lagoons #2 and #3, installation of a dechlorination system, and construction of a new headworks building in which there will be various equipment and space including a mechanical screen, aeration blowers, a standby generator, laboratory space and a future grit chamber, and all other related items and appurtenances necessary, useful and convenient for the collection and treatment of wastewater within the City (herein the "Project"); and

WHEREAS, for the purpose of permanently financing a portion of the cost of the Project, the Council further deems it necessary to issue its sewer revenue bonds in the principal amount of up to \$2,000,000, payable solely from the revenues of said System pursuant to the Revenue Bond Act (herein the "Act"), cited as Sections 50-1027 through 50-1042, Idaho Code, as amended, and all laws thereunto enabling; and

WHEREAS, at a special bond election duly held on February 3, 2004, there was submitted to the qualified electors of the City the following question:

Shall the City of St. Anthony, Idaho, be authorized to issue its sewer revenue bonds, in one or more series of bonds, in the aggregate principal amount for all such bonds of not more than \$5,000,000, or so much thereof as may be necessary, for the purpose of providing funds with which to renovate, improve, upgrade, and better the sewer and wastewater treatment system of the City, said bonds to be payable annually or at such lesser intervals as determined by future City ordinances, and to mature serially commencing at the expiration of at least one (1) year from their date and ending not more than thirty (30) years from their date, and to bear interest at a rate or rates to be determined by an ordinance or resolution of the City, as more fully provided in Ordinance No. 2003-18, signed and approved on the 17th day of December, 2003, the principal of and the interest on said bonds to be payable solely from the net revenues to be derived from the operation of the City's sewer and wastewater treatment system?

WHEREAS, said question was approved by more than a majority of the qualified electors of the City voting at said election and the results were then and are hereby so declared;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ST. ANTHONY, IDAHO:

Section 01. Short Title. This Ordinance may be designated by the short title "2006B Sewer Revenue Bond Ordinance".

Section 02. Definitions. The terms defined in this Section, except where the context requires otherwise, shall have the following meanings:

"Act" means the Revenue Bond Act as defined herein.

"Bond Fund" means the "2006B Sewer Revenue Bond Fund."

"Bond", "2006B Bond", or "2006B Bonds" means the bond or bonds entitled "City of St. Anthony Sewer Revenue Bond, Series 2006B" or any bonds issued in substitution therefor.

"Bond Ordinance" means this 2006B Sewer Revenue Bond Ordinance.

"Consulting Engineer" means Schiess & Associates, or any other qualified registered or licensed professional engineer practicing under the laws of the State of Idaho.

"Fiscal Year" means the twelve (12) months commencing October 1 of any year and ending September 30 of the following year or such other Fiscal Year as may subsequently be required by state law.

"Gross Income", "Gross Revenues", "Income" or "Revenues" means all income and revenue derived by the City from any rates, fees, tolls and charges for the services furnished by, or the use of, the System as the same may at any time exist to serve customers within or outside the municipal limits, whether resulting from improvements or otherwise.

“Holder” means the registered owner of the Bonds.

“Independent Accountant” means any certified public accountant practicing under the laws of the State of Idaho who is independent and not an officer or employee of the municipality.

“Insured Bank” means a bank qualified to accept public deposits under state law which is a member of the Federal Deposit Insurance Corporation.

“Net Income” or **“Net Revenues”** means the remaining revenues of the System after deducting Operation and Maintenance Expenses and amounts due for payment of the Parity Bonds.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the municipality, paid or accrued, 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, or charges for the accumulation of reserves.

“Parity Bond” or **“Parity Bonds”** means the City’s Sewer Revenue Bonds, Series 2006A, dated March 1, 2006, and held by the Idaho Department of Environmental Quality (“IDEQ”) as evidence and security for an IDEQ loan of \$3,000,000 for the Project.

“Paying Agent” means the City of St. Anthony, Idaho, or, as to any Bond owned or insured by the USA, at any local county office of the USA, or at such other place as the USA shall have designated in writing.

“Project” means the improvement and construction program to be financed in part by the 2006B Bond and described above.

“Project Engineer” means the Consulting Engineer hired by the City for the Project.

“Purchaser” means the USA or other purchaser of the 2006B Bond or manager of any purchasing syndicate.

“Registrar” means the Bond Registrar, the City Clerk for the City of St. Anthony, Idaho, so designated for registration and transfer of the Bonds pursuant to this Bond Ordinance and the Idaho Registered Public Obligations Act, Chapter 9, Title 57, Idaho Code, as amended.

“Reserve Fund” means the “2006B Sewer Revenue Bond Reserve Fund”.

“Revenue Bond Act” or **“Act”** means Sections 50-1027 through 50-1042, Idaho Code, as amended.

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

“USA” means the United States of America. “USA” may include Rural Development of the United States Department of Agriculture.

Section 03. Ratification. All consistent action taken previously by the Council and the municipal officers directed toward the Project and toward the issuance of its revenue bonds for that purpose is ratified, approved and confirmed.

Section 04. Authorization of Project. The Project is authorized at a total cost of approximately \$6,500,000 and the necessity thereof is hereby declared. Of this amount, approximately \$1,500,000 will be defrayed from sources other than 2006B Bond or Parity Bond proceeds. The Project is briefly and generally described as consisting of the improvement of the System by making the following improvements and acquisitions: the sewer collection system will be improved by replacement of approximately sixty percent (60%) of all wastewater gravity collection lines including the main trunk line to the treatment plant, replacement of one lift station, rehabilitation of two other lift stations, and purchase of a jetter truck to maintain all gravity collection lines. Necessary improvements to the wastewater treatment facility include rehabilitation of the aerated primary lagoon, rehabilitation of the hydro power plant, replacement of the existing chlorine disinfection system, installation of a bypass line for lagoons #2 and #3, installation of a dechlorination system, and construction of a new headworks building in which there will be various equipment and space including a mechanical screen, aeration blowers, a standby generator, laboratory space and a future grit chamber, and all other related items and appurtenances necessary, useful and convenient for the collection and treatment of wastewater within the City of St. Anthony, Idaho, all as more particularly described in the Consulting Engineer’s report, as supplemented, and plans and specifications which have heretofore been prepared and filed by the Consulting Engineer, a qualified firm of consulting engineers chosen for that purpose, which report and plans and specifications are available for inspection in the Office of the City Clerk.

Section 05. Authorization of Bonds and Sale Thereof. For the purpose of providing funds to finance and/or refinance a portion of the cost of the Project, 2006B Bonds in the principal amount of \$2,000,000 shall be issued and be payable both as to principal and interest, solely from the Net Revenues of the System, and the City shall pledge irrevocably such Net Revenues to the payment of said Bonds and the interest thereon, the proceeds thereof to be used solely for the aforesaid purpose, pursuant to the Revenue Bond Act. The sale of the Bonds to the Purchaser in accordance with any Loan/Grant Approval Conditions is hereby accepted and confirmed. The Mayor, Clerk, and Treasurer are hereby authorized to execute such documents as may be necessary to effect the sale of the Bonds.

Section 06. Description of Bond. The Bond shall be dated the later of November 14, 2006, or the date of closing and delivery of the Bond, shall consist of one bond in the denomination of \$2,000,000 numbered one (1), shall bear interest from the date of delivery at a rate of four and 250/1000ths percent (4.250%) per annum, and together with equally amortized payments of

principal, shall be payable to the Holder on the anniversary date of the Bond date (i.e., date of closing) of each year, commencing on said anniversary date in 2007 and ending with final payment on said anniversary date in 2036, and shall be substantially in the form set forth in Exhibit "A" attached hereto and by this reference incorporated herein.

Section 07. Payment of Bonds; Pledge of Net Revenues.

A. The principal of and interest on the Bond are payable in lawful money of the United States of America to the Holder thereof, without deduction for exchange or collection charges, whose name and address shall appear on the registration records of the City (the "Bond Register") maintained by the Bond Registrar, at the Paying Agent or the USA, as the case may be.

B. The Bond, upon the surrender thereof at the Office of the City Clerk for the City of St. Anthony, Idaho, with a written instrument of transfer duly executed by the registered owner or its duly authorized attorney, may, at the option of the registered owner and at its expense, be exchanged for serial bonds, in registered form, in the aggregate principal amount then remaining unpaid, bearing the same interest rate, maturing annually on the anniversary date of the Bond date of each of the remaining years of the original term of this Bond and dated as of the year during which the surrender and exchange is effected. Serial bonds so issued shall be redeemable according to the provisions of this Bond Ordinance.

C. The City hereby pledges the Net Revenues to the punctual payment of the Bond.

Section 08. Prior Redemption and Prepayment. Prepayments shall be made on the date, at the place, and in the manner provided herein for making regularly scheduled annual installments, and partial prepayments shall be in the amount of or in integral multiples of \$1,000, plus accrued interest to the date of such prepayments, and any such prepayments shall be applied in inverse order of maturity of the principal payments due under the terms of the Bond. No partial prepayment shall extend or postpone the due date of any subsequent annual installment. Any such prepayment shall be made without penalty, without additional interest or charges. If serial bonds are issued in substitution for the Bond, such serial bonds shall be subject to redemption prior to their respective maturities, in inverse numerical order, on any principal and interest payment date without premium or penalty.

Notice of prior redemption or prepayment shall be mailed at least thirty (30) days prior to the redemption date to each Holder whose name and address appears on the registration books. So long as any Bond is owned or insured by the USA, notice of prepayment or redemption shall be mailed to the USA at least thirty (30) days prior to the prepayment or redemption date at such address as the USA may designate. Any notice of redemption or prepayment shall identify the Bond to be redeemed or prepayment to be made, specify the redemption or prepayment date, and state that on such date the principal amount thereof and accrued interest to the redemption or prepayment date will become due and payable and thereafter interest will cease to accrue. After such notice and presentation of said Bonds, the Bonds called for redemption will be paid.

Section 09. Bond Registration. Each Bond shall be registered for payment as to both principal and interest. The City Clerk of the City of St. Anthony, Idaho, is appointed bond registrar (herein the "Registrar" or "Bond Registrar") and shall maintain books for the registration, transfer and conversion of Bonds, and do all things authorized by the Idaho Registered Public Obligations Act, Chapter 9, Title 57, Idaho Code, as amended. The Registrar shall register or permit to be transferred or discharged from registration any Bond presented for such purpose subject to said act and such reasonable regulations as the Registrar may prescribe and after the City is reimbursed for any tax or governmental charge payable in connection therewith. For the purposes of said Registered Public Obligations Act, this Bond Ordinance shall constitute a "system of registration" within the meaning, and for all purposes, of said act.

The Bond may be transferred only upon the books for the registration and transfer of bonds, upon the surrender thereof at the office of the Bond Registrar, together with a form of transfer duly executed by the registered owner or his attorney duly authorized in writing, substantially in the form of Bond set forth in Exhibit "A". Upon the transfer of any 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 be dated as of the year during which the surrender and exchange is effected, and shall bear interest from the immediately preceding interest payment date to which interest has been paid or duly provided for.

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

Section 10. Ownership of Bonds. The City and its officers shall treat the person in whose name any Bond is registered as the absolute owner, whether or not such Bond shall be overdue. All payments made as provided in this Ordinance shall be valid and effectual to discharge the liability upon any Bonds to the extent of the amount so paid.

Section 11. Execution of Bonds. If their facsimile signatures are to be printed on the Bonds, the Mayor, Clerk and Treasurer shall file their manual signatures with the Secretary of State. Without reasonable delay, the City shall cause definitive Bonds to be prepared, executed, and delivered, which Bonds may be typewritten, lithographed or printed with engraved or lithographed borders at the option of Purchaser. The Bonds shall be signed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the Treasurer, which signatures shall be attested by the manual or facsimile signature of the Clerk, and the seal of the City or a facsimile thereof shall be imprinted thereon.

In case any of the officers who shall have signed or countersigned any of the Bonds shall cease to be such officer or officers of the City before the Bonds so signed or countersigned shall have been delivered or issued by the City, such Bonds may nevertheless be delivered and issued and, upon such delivery and issue, shall be as binding upon the City as though those who signed and countersigned the same had continued to be such officers of the City. Any Bond may also be signed and countersigned on behalf of the City by such persons as at the actual date of execution

of such bonds shall be the proper officers of the City although at the original date of such Bond any such person shall not have been such Officer of the City.

Section 12. Incontestable Recital. Pursuant to the Revenue Bond Act the Bond herein authorized shall recite that it is issued pursuant to said Act, which recital shall be conclusive evidence of its validity and of the regularity of its issuance.

Section 13. Special Obligations. Principal of and interest on the Bond shall be payable solely out of the Net Income of the System. The Net Income of the System is pledged for that purpose. The Holder may not look to any general or other fund for the payment of Bond principal or interest, except any special funds pledged therefor. The Bond shall not constitute an indebtedness nor a debt within the meaning of any constitutional or statutory provision or limitation and shall not be considered general obligations of the City. The Bond shall constitute the City's special obligation.

Section 14. Period of Facilities' Usefulness. The facilities to be acquired with bond proceeds will be useful for at least thirty (30) years, i.e., until at least the anniversary date of the Bond date in 2036.

Section 15. Bond Preparation, Execution and Delivery. The Mayor, Clerk and Treasurer are directed to prepare and execute the Bond. Thereafter, the Treasurer shall deliver them to the Purchaser on receipt of the agreed purchase price.

Section 16. Disposition of Bond Proceeds; Construction Fund. The proceeds of the Bond shall be used to immediately repay, in part or in whole, the interim financing (the City's Bond Anticipation Note, Series 2005) obtained for construction of a portion of the Project and to pay the costs of issuance of the Bond. Proceeds of the Bond thereafter remaining, if any, shall be deposited in the Construction Fund, which is hereby established, and the funds therein shall be held separate and apart from the rest of the funds of the City and shall be disbursed for payment of, and/or reimbursement of the City for, the costs of the Project and costs of issuance of the Bond.

Section 17. Fiscal Year. For the purpose of this Bond Ordinance the System shall be operated upon a Fiscal Year commencing October 1 in each year and ending on September 30 of the following year or such other Fiscal Year as may subsequently be required by state law.

Section 18. Income Fund. A special fund and bank account or subaccount shall be maintained separate and distinct from all other funds and accounts of the City to be known as the "Income Fund." So long as any Bonds shall be outstanding all income and revenues derived from the operation of the System, less any amounts due in connection with payment of the Parity Bond, shall be deposited into the Income Fund.

Section 19. Administration of Income Fund. The following payments shall be made from the Income Fund:

A. Operation and Maintenance Expenses. Firstly, there shall be set aside each month such reasonable percentage of the Income Fund as the City shall determine to be reasonable and necessary for the proper operation and maintenance of the System. Any surplus remaining at the end of the Fiscal Year and not used for operation and maintenance purposes shall be transferred back to the Income Fund.

B. Bond Fund Payments. Secondly, from any moneys remaining in the Income Fund there shall be deposited into a separate account known as the "2006B Sewer Revenue Bond Fund" (herein the "Bond Fund"), the following:

(1) Commencing on the first day of the month immediately following delivery of the Bond, an amount, in monthly installments, which, with other monies available therefor, will be equal to at least one-twelfth (1/12) of the principal and interest to become due on the next principal and interest payment date on the Bond. The monies allocated shall be used solely to pay currently maturing installments of principal of and interest on the Bond.

(2) If serial bonds have been substituted for the Bond, then

(a) Commencing on the first day of the month immediately following such substitution, an amount in equal monthly installments which, with other monies available therefor, will be equal to at least one-sixth (1/6) of the next installment of interest on the outstanding 2006B Bonds, and on the first of each and every month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the outstanding 2006B Bonds.

(b) Commencing on the first day of the month immediately following such substitution, an amount in equal monthly installments which, with other monies available therefor, will be sufficient to pay the next semi-annual installment of principal of the outstanding Bonds, and on the first of each and every month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing installment of principal on the outstanding 2006B Bonds.

(3) If the City for any reason shall fail to make such monthly deposits, then an amount equal to the deficiency shall be set apart and deposited in the Bond Fund out of the Net Revenues in the ensuing month or months, which amount shall be in addition to the regular monthly deposit required during such succeeding month or months.

C. Debt Service Reserve Fund. There is hereby created a separate account in the Bond Fund known as the "2006B Sewer Revenue Bond Debt Service Reserve Fund," (herein the "Reserve Fund"), which shall be maintained by the Treasurer.

(1) Deposits. Concurrently with the above payments into the Bond Fund, commencing on the first day of the month immediately following the delivery date, the City shall begin depositing amounts to the Reserve Fund to accumulate annually by each anniversary date of the Bonds at least \$11,920.00 per year in the Reserve Fund. Such deposits shall continue each year until the amount on deposit does not exceed the least of (i) 10% of the original par amount of the Bond, (ii) maximum annual debt service on the Bond, or (iii) 125% of the average annual debt service on the Bond.

(2) Withdrawals. Whenever any monies are withdrawn from the Reserve Fund to pay the principal of or interest on the Bond, then the Treasurer shall, on or before the 15th day of the month preceding the next principal and interest payment date, deposit from the Income Fund into the Reserve Fund an amount sufficient to restore the amount withdrawn.

(3) Refunding. In the event refunding bonds are ever issued, the amount set aside into the Reserve Fund to secure the payment of the Bonds shall be used to retire Bonds.

(4) Investments. Subject to the limitations set forth in the Tax Certificate of the City with respect to the Bonds, all monies in the Reserve Fund may be kept in cash or deposited in institutions permitted by law in an amount in each institution not greater than the amount insured by any department or agency of the United States government, or may be invested and reinvested in any legal investment permitted for City monies maturing not later than the last maturity date of any outstanding Bonds. Interest earned on any such investment shall be deposited into the Bond Fund.

(5) The monies in the Reserve Fund shall be maintained as a continuing reserve to be used only to pay principal of and interest on Bonds, if necessary to prevent a default. With prior written approval of the USA, funds may also be used and withdrawn for:

(a) Capital Costs. To pay the cost of reconstruction or improving the System; and

(b) Major Maintenance Costs. To pay the costs of extraordinary and major repairs, renewals, replacements, or maintenance items appertaining to such System of a type not recurring annually and not defrayed as Operation and Maintenance Expenses.

D. Payment for Additional Obligations. After making the above payments, any balance in the Income Fund may be used for the payment of principal and interest on additional Bonds including reasonable reserves therefor. The lien of additional Bonds on Net Income shall be on a parity with, or subordinate to, the lien and pledge of the 2006B

Bonds. Any payments in respect of additional parity bonds shall be made concurrently with those required by this Section.

E. Use of Surplus Revenues. After making the above payments, the remaining Net Income shall be applied for any of the following purposes:

- (1) The additional renovation, improvement, extension, upgrading and betterment of the System;
- (2) The payment of debt service on other obligations incurred in the acquisition, construction or improvement of the System;
- (3) The redemption or prepayment, in whole or in part of the Bond, or purchase in the open market or prior redemption of any Bonds payable from Net Revenues at the best reasonable price obtainable;
- (4) Any other lawful purpose.

Section 20. General Administration of Funds. The funds and accounts hereof shall be administered as follows:

A. Places and Times of Deposits or Transfers of Funds. The above accounts and funds shall be separately maintained and deposited in one or more bank accounts in an Insured Bank or Banks. Each account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any other purpose. Payments shall be made into the proper account on the first day of the month or year, as the case may be, except when the first day shall be a Sunday or legal holiday, then payment shall be made on the preceding secular day. At least five (5) days prior to any principal and interest payment date, monies sufficient to pay interest and principal then due shall be transferred to the Paying Agent. Nothing in this Ordinance shall prevent the City from establishing one bank account for any of the funds required by this Bond Ordinance.

B. Investment of Monies. Monies in any fund not immediately needed may be invested as provided by state and applicable federal statutes and regulations, provided that the City shall take no step or make any investment which would imperil the exemption of the interest on the Bond from income taxation under any federal law now in force or hereafter existing or which is contrary to the limitations set forth in the Tax Certificate of the City with respect to the Bonds.

Section 21. Lien of the Bonds. The 2006B Bonds constitute an irrevocable lien upon the Revenues, subject to the payment of all necessary and reasonable Operation and Maintenance Expenses, and on a parity with the lien of and payment for the Parity Bond.

Section 22. Additional Bonds.

A. Earnings Test. This Bond Ordinance shall not prevent the issuance of additional bonds payable from and constituting a lien upon Net Income on a parity with the lien of the 2006B Bond. Before any such additional parity Bonds are actually issued, it must be determined that:

(1) The City is not, and has not been in default of this Bond Ordinance during the Fiscal Year immediately preceding the issuance of such additional Bonds, or if the Bonds have not been outstanding for a full Fiscal Year, then for the longest period of time the 2006B Bond has been outstanding; and

(2) The Net Income derived from the operation of the System for the Fiscal Year immediately preceding the date of the ordinance authorizing the issuance of any such parity lien obligations shall have been sufficient, or future Net Income as projected by a Consulting Engineer shall be sufficient, to pay an amount representing 125% of the maximum annual principal and interest requirements on the outstanding 2006B Bond constituting a lien upon Net Revenues, and on the bonds proposed to be issued (excluding reserves). As used in this Section, "maximum annual principal and interest requirements" shall be the largest amount of principal and interest coming due on the then outstanding 2006B Bond and proposed parity lien obligations during any subsequent Fiscal Year; and

(3) In the event USA is the Holder of the 2006B Bond, the prior written consent to the issuance of such parity bonds has been obtained.

The foregoing limitations upon the issuance of parity bonds shall not apply in the case of the issuance of additional parity bonds necessary to complete the Project in accordance with the plans and specifications.

B. Certification of Revenues. A written certificate by the Consulting Engineer that Net Income is sufficient shall conclusively determine the right of the City to issue additional parity bonds. The Consulting Engineer may utilize the results of any annual audit to the extent it covers the applicable period.

C. Consideration of Additional Expenses. In determining whether additional parity bonds may be issued, the Consulting Engineer shall consider any probable increase (but not reduction) in Operation and Maintenance Expenses.

D. Subordinate Obligations Permitted. The City may issue bonds or other obligations having a lien on Net Revenues subordinate to the lien of the 2006B Bonds. In the event USA is the Holder of the 2006B Bond, the prior written consent to the issuance of such subordinate bonds has been obtained.

E. Superior Obligations Prohibited. The City shall not issue any bond or other obligation having a lien prior and superior to the 2006B Bonds.

Section 23. Refunding Bonds. The provisions of Section 22 hereof are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding Bonds or obligations constituting a lien upon System Revenues, said Bonds or other obligations may be refunded (but only with the consent of the Holders, unless the Bonds or other obligations shall then mature, or be callable without penalty) regardless of whether lien priority is changed hereby (except as provided in paragraph E of Section 22 hereof and in paragraphs B and C of this Section 23); provided however that the Bonds shall not be defeased by the City through refunding or otherwise as long as the USA is the registered owner thereof unless the USA gives its prior written consent thereto.

B. Limitations Upon Issuance of Parity Refunding Obligations. No refunding bonds or obligations refunded shall be on a parity with the 2006B Bonds, unless:

(1) The lien of the obligations refunded is on a parity with the lien of the 2006B Bonds, or

(2) The refunding bonds or obligations are issued in compliance with paragraph A of Section 22 hereof.

C. Refunding Part of an Issue. The refunding bonds or obligations shall enjoy complete equality of lien with any portion of the same issue which is not refunded. The Holders of such refunding bonds or obligations shall be subrogated to all of the rights and privileges enjoyed by the Holders of the bonds or obligations of the same issue refunded thereby.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding bonds or obligations payable from System Revenues shall be issued with such details as the City may provide, but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue (including the 2006B Bonds). If only a part of any issue is refunded, then there may be no refunding without the consent of the Holders of the unrefunded portion, unless:

(1) The refunding bonds or obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations, or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded.

Section 24. Equality of Bonds. The 2006B Bonds shall not be entitled to any priority one over the other in the application of Net Revenues, regardless of the times of their issuance.

Section 25. Protective Covenants. The City covenants and agrees with each and every Holder that:

A. Use of Bond Proceeds. The proceeds of the Bonds shall be used to finance construction of the Project in accordance with Section 16 hereof.

B. Payment of Bonds Herein Authorized. The City will pay Bond principal and interest at the place, on the dates, and in the manner specified according to the true intent and meaning thereof.

C. Use Charges. Rates for services rendered by the System shall be reasonable and just, taking into account the cost and value of the System, operation and maintenance expenses, possible delinquencies, proper allowances for depreciation, contingencies, and the amounts necessary to retire all Bonds payable from Net Revenues, and the reserves therefor. There shall be charged against all users, including the State and its subdivisions, rates and amounts sufficient to produce revenues to pay the annual operation and maintenance charges, and the annual principal of and interest on all Bonds and other obligations payable from Net Revenues, including reserves. No free service shall be furnished by the City. Any use of the System by the City will be paid for from the City's general fund at the reasonable value of the use so made. Income so derived from the City shall be treated in the same manner as any other System income.

D. Levy of Charges. Prior to the delivery of the 2006B Bonds, the City will establish and levy the required rates and charges. No reduction in any initial rate schedule may be made unless there is prior written approval by the USA or:

(1) The City has complied with Section 19B for at least two (2) Fiscal Years immediately preceding such reduction; and,

(2) The audits for the full two (2) Fiscal Years immediately preceding such reduction disclose that the estimated revenues resulting from the proposed rate schedule will be sufficient to meet the requirements of paragraph C of this Section 25.

E. Efficient Operation. The City shall make such improvements and repairs to the System as may be necessary to insure its economical and efficient operation and its ability to meet demands for service.

F. Records. Separate records will be kept showing complete and corrected entries of all transactions relating to the System. Such records shall include monthly entries showing:

(1) The number of customers;

(2) The revenues received; and

(3) A detailed statement of expenses.

G. Right to Inspect. The Purchaser, any Holder, or their duly authorized agents, shall have the right at all reasonable times to inspect the System, and all records, accounts, and data relating thereto.

H. Audits. The City agrees that it will, within one hundred fifty (150) days following the close of each Fiscal Year, furnish to the Holder an audit made by an Independent Accountant. Each such audit, in addition to matters thought proper by the accountant, shall include:

(1) A statement for the Fiscal Year just closed, of the income and expenditures of the System, including gross revenues, net revenues, the amount of any capital expenditures and profit or loss;

(2) A balance sheet as of the end of such Fiscal Year, including all funds created by proceedings authorizing Bonds payable from System revenues;

(3) The accountant's comment regarding the City's methods of operation and accounting practice;

(4) A list of the insurance policies in force, setting out the amount of each policy, the risks covered, the name of the insurer, and the expiration date;

(5) A recapitulation of each fund or account created by the various proceedings showing deposits and withdrawals for said Fiscal Year. Any Holder shall have the right to discuss the contents with any person making the audit;

(6) The accountant's statement that to the best of his knowledge the City is in compliance with the provisions of this Bond Ordinance, or if the City is not in compliance, specifying where and how the City has failed to comply with this Bond Ordinance.

I. Budgets. The City agrees that it will comply with State budget laws in preparing annual budgets and in keeping accounts and records. The City will establish an acceptable method of bookkeeping for the System, and if the Holder of the Bond is the USA, the City will obtain the prior approval of such bookkeeping method from the USA. The City will prepare an annual operating budget for the System, and if the Holder of the Bond is the USA, the City will submit a copy of each such budget to the USA as soon as available but not later than thirty (30) days prior to the beginning of the budget year.

J. Billing Procedure and Discontinuance of Service. All bills shall be sent out on a regularly established day of each month in advance or after service is rendered. Bills shall be due within twenty (20) days from date, or such lesser time prescribed by City resolution. In lieu of monthly billings the City may require by resolution that rates and charges established by the City shall be paid by the 20th of each month, or such lesser

time prescribed by City resolution. If bills are not paid sixty (60) days after such date or such lesser time prescribed by City resolution, they shall be collected in any lawful manner, including the denial or discontinuance of service.

K. Use of Bond and Reserve Funds. The Bond Fund and the Reserve Fund shall be used solely and only, and said funds are hereby pledged, for the purposes set forth above.

L. Charges and Liens Upon System. The City will pay all taxes and governmental charges lawfully levied in respect of the System when due. The City will comply with all valid requirements of any governmental authority relative to the System. It will not create or permit to be created any lien or charge upon the System or the Revenues except as permitted herein. The City will satisfy all claims and demands within sixty (60) days after the same shall accrue which might by law become a lien upon the System or upon the Revenues unless the validity thereof is being contested in good faith by appropriate legal proceedings.

M. Construction Contract and Bond. The City will require each person, firm or corporation with whom it may contract for labor or materials to furnish a performance and payment bond in the full amount of any contract. Any such contract will meet the reasonable requirements of the Purchaser as are not inconsistent with state law.

N. Insurance. Fire and extended coverage insurance on the System will be in such minimum amounts as are reasonable and prevalent for similar municipalities and systems in the State of Idaho and under such other terms and conditions as determined with the assistance of the Project Engineer, provided that such coverage amount shall not be less than the replacement cost of the system. The City will maintain liability insurance coverage of not less than \$500,000/\$1,000,000 with regard to personal injury and not less than \$100,000 with regard to property damage. The City will carry worker's compensation coverage on all full-time employees in accordance with applicable state laws. The City will carry a fidelity bond on the position of City Clerk/Treasurer in an amount of not less than \$100,000, and if the USA is the Holder of the Bond, the USA will be named as a co-obligee on such fidelity bond and the USA will be furnished a copy of such fidelity bond with the appropriate power of attorney form attached.

O. Competing System or Works. The City shall not grant any franchise or license to a competing System, or permit any person or organization to sell sewer service within the City.

P. Alienating System. The City will not sell, lease, mortgage, pledge, or otherwise alienate, the System, or any part thereof, except any portion which shall have been replaced by other property of at least equal value or which shall cease to be necessary for the efficient operation of the System. In the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Income.

Q. Extension of Interest Payments. The City will not extend or be a party to the extension of the time for paying any claim for interest. Any installment of interest so

extended shall not be entitled in case of default hereunder to the benefit or security of this Bond Ordinance except subject to the prior payment in full of the principal of all Bonds and interest which has not been extended.

R. Management of the System. If an “event of default” shall occur or if the Net Revenues in any Fiscal Year fail to equal principal, interest and reserves for all Bonds payable from Net Revenues, the City shall retain a Consulting Engineer to assist the management of the System so long as such default continues or the Net Revenues are less than the amount designated.

S. System Operation and Maintenance. The City has adopted or will adopt adequate Rules and Regulations for the operation of the System, and such Rules and Regulations shall be approved by the USA. The City has prepared or will prepare an Operation and Maintenance Manual for the System, and such Manual shall be approved by the USA. The City will provide the USA with a summary of the training provided or to be provided to System employees in the operation and maintenance of the System.

T. Number of Users. Prior to issuance of the 2006B Bond, the City will certify to the USA that there are at least 1,484 equivalent dwelling units who will connect to the System and pay the monthly service charge.

U. Indemnification. So long as the USA is the Holder of the 2006B Bond, the City will indemnify the USA for any payments made or losses suffered by the USA on behalf of the City. Such indemnification shall be payable from Revenues or from any other legally permissible source.

V. Compliance with Agreements. So long as the USA is the Holder of the 2006B Bond, the City will comply with all of its agreements and obligations in or under this Bond Ordinance, the Loan Resolution adopted by the City with respect to the Bonds, the Bond and any other security agreements or other documents executed by the City in connection with the Bond.

W. Providing Adequate Service. The City will provide adequate service to all persons within the System’s service area who can feasibly and legally be served. So long as the USA is the Holder of the 2006B Bond, the City will obtain the USA’s concurrence prior to refusing new or adequate services to such persons. It is understood that upon the City’s failure to provide services which are feasible and legal, such person shall have a direct right of action against the City.

X. City’s Existence. The City will maintain its corporate identity and existence so long as the 2006B Bond remains outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any Holder.

Y. Floodplain Area. The City agrees to not purvey or sell sewer services to any new users located in the identified floodplains or in the areas outside the City limits that

would also be considered to be within a 100-year floodplain based on the best information available, unless a registered professional engineer certifies to the City that a particular development proposal will not increase the level of the 100-year floodplain.

Z. Non-Waiver of Contest Period. The Council and the City, in consideration of the purchase of the Bonds, hereby covenant and agree with the holders of the Bond from time to time that neither the City nor the Council will ever waive, or agree to waive, as to the February 3, 2004, bond election, the time limitation provisions of subsection B of Section 34-2001A of the Idaho Code.

Section 26. Non-Arbitrage. The proceeds of the sale of the Bond shall not be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause the Bond to be an arbitrage bond within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The City shall also comply with all terms of the Tax Certificate furnished by the City at closing of the Bonds and shall take such measures as needed in order to assure that interest on the Bonds is excluded from federal income tax under Section 103 of the Code.

Section 27. Issuance Limitation. The City hereby represents that the City (including all "subordinate entities" of the City within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipates not to issue in the 2006 calendar year obligations bearing interest exempt from federal income taxation under Section 103 of the Code (other than "private activity bonds" as defined in Section 141 of the Code) in an amount greater than \$10,000,000.00.

Section 28. Designation as Qualified Tax-Exempt Obligation. Pursuant to Section 265(b)(3) of the Code, the City hereby specifically designates the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code.

Section 29. Events of Default. It is an "event of default" if:

- A. Non-Payment of Principal. Payment of principal of any 2006B Bond is not made when due at maturity or upon prior redemption.
- B. Non-Payment of Interest. Payment of interest is not made when due.
- C. Incapable to Perform. The City is not capable of fulfilling its obligations hereunder.
- D. Default of any Provision. The City defaults in the punctual performance of its covenants hereunder for sixty (60) days after written notice shall have been given by the Holders of 25% or more of the outstanding Bonds.

Section 30. Remedies of Defaults. Upon the happening of any event of default, the Holder or Holders of not less than 25% in principal amount of the outstanding Bonds, or a trustee therefor, may protect and enforce the rights of any Bondholder by proper legal or equitable remedy deemed most effectual, including mandamus, specific performance of any covenant, the appointment of a receiver

(the consent to such appointment being hereby granted), injunctive relief, or requiring the governing body of the City to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all Holders. Any receiver appointed to protect the rights of Bondholders may take possession and operate and maintain the System in the same manner as the City itself might do. The failure of any Holder to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right and the exercise of any right by any Bondholder shall not be deemed a waiver of any other right.

Section 31. Duties Upon Default. Upon the happening of any event of default, the City will perform all proper acts to protect and preserve the security created for the prompt payment of the principal of and interest on Bonds. The Holder or Holders of not less than 25% in principal amount of the outstanding Bonds, after written demand, may proceed to protect and enforce the rights provided by this Section.

Section 32. Prior Charge Upon Lower Rates. If any commission or authority lawfully prescribes a lower schedule of rates than that contemplated by this Bond Ordinance, then the payment of principal and of interest on the 2006B Bonds, any existing Parity Bonds, and any additional parity bonds, shall constitute a first and prior charge on Revenues of the System.

Section 33. Amendment of Ordinance. This Bond Ordinance may be amended, without receipt by the City of any additional consideration, but with the written consent of the Holders of three-fourths (3/4) of the 2006B Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the Holders of all outstanding Bonds shall have the effect of permitting:

- (1) An extension of the maturity of any Bond; or
- (2) A reduction in the principal amount or interest rate of any Bond; or
- (3) The creation of a lien upon revenues ranking prior to the lien or pledge created by this Bond Ordinance; or
- (4) A reduction of the principal amount of bonds required for consent to such amendatory ordinance; or
- (5) The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or
- (6) The modification of or otherwise affecting the rights of the Holders of less than all of the outstanding Bonds.

Section 34. Ordinance Irrepealable. After any of the 2006B Bonds are issued, this Bond Ordinance shall be irrepealable until the principal of and interest on all outstanding 2006B Bonds have been paid in full.

Section 35. Severability Clause. The invalidity or unenforceability of any provision of this Bond Ordinance shall not affect the remaining provisions.

Section 36. Ordinance Subject to Loan Resolution and Loan Conditions; Repealer Clause.

The provisions of this Bond Ordinance and the 2006B Bonds are subject to all of the provisions contained in that certain Loan Resolution adopted by the City on July 27, 2005, including all Loan and Grant Approval Conditions, as amended, of the USA. All other bylaws, orders and ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 37. Publication. This Bond Ordinance, or a summary thereof, upon passage, shall be recorded, authenticated and published in the official newspaper of the City within thirty (30) days of the date hereof.

Section 38. Effective Date. This Bond Ordinance shall be in full force and effect from and after its passage, approval and publication, as provided by law.

PASSED by the City Council of the City of St. Anthony, Fremont County, Idaho, this 8th day of November, 2006.

APPROVED by the Mayor of the City of St. Anthony, Fremont County, Idaho, this 8th day of November, 2006.

Willard D. Beck
MAYOR

ATTEST:

By: Jani Stoddard
CITY CLERK

(SEAL)

EXHIBIT "A"

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF IDAHO
COUNTY OF FREMONT

Registered No. R-1

\$2,000,000

CITY OF ST. ANTHONY
SEWER REVENUE BOND, SERIES 2006B

INTEREST RATE

4.250%

MATURITY DATE

November 14, 2036

DATED DATE

November 14, 2006

REGISTERED OWNER:

UNITED STATES OF AMERICA

PRINCIPAL AMOUNT:

TWO MILLION AND 00/100 DOLLARS

KNOW ALL MEN BY THESE PRESENTS: That the City of St. Anthony, Fremont County, Idaho (the "City"), for value received, promises to pay solely from the "2006B Sewer Revenue Bond Fund" (the "Bond Fund") created by Ordinance No. 2006-11, adopted on November 8, 2006 (the "Bond Ordinance"), to the Registered Owner identified above, or registered assigns, the principal amount identified above, and to pay interest thereon from the aforesaid Bond Fund from November 14, 2006, or the most recent date to which interest has been paid or duly provided for, at the rate specified above. Annual installments of principal and interest in the amount of \$119,200 shall be paid beginning on November 14, 2007, and on November 14 annually thereafter for a period of thirty (30) years from the date hereof. The final payment may be in such lesser or greater amount as is necessary to pay the balance of principal and interest then remaining due.

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 appear on the registration books of the City (the "Bond Register") maintained by the Bond Registrar, which shall be the City Clerk of the City of St. Anthony, Idaho.

Payments of all installments of principal and interest on this Bond shall be made to the registered Holder, without presentation or demand.

This Bond is issued by the City for the purpose of paying a portion of the cost of constructing, improving and bettering the City's municipal sewer and wastewater treatment

system (the "System") as more fully described in the Bond Ordinance. This Bond is issued pursuant to and in full compliance with the Constitution and statutes of the State of Idaho, particularly Sections 50-1027 through 50-1042, and Title 57, Chapter 2, Idaho Code, and proceedings duly adopted and authorized by the City, more particularly the Bond Ordinance, and also pursuant to the legal authorization of a Special Election duly noticed, held, and conducted within the City on February 3, 2004.

This Bond may be called for redemption and payment in full, or in part in integral multiples of \$1,000, plus accrued interest to the date of such prepayment, without penalty and without additional interest or charges, at the option of the City upon any installment due date, and any such prepayments shall be applied in inverse order of maturity of the principal payments due under the terms of this Bond. If serial bonds are issued in substitution for the Bond, such serial bonds shall be subject to redemption prior to their respective maturities, in inverse numerical order, on any principal and interest payment date without premium or penalty.

THIS BOND DOES NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF ST. ANTHONY OR OF THE COUNTY OF FREMONT OR OF THE STATE OF IDAHO, OR OF ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER SAID CITY, COUNTY, STATE OR ANY SUBDIVISION THEREOF SHALL BE LIABLE HEREON, NOR HAS THE FULL FAITH AND CREDIT OF SAID CITY, COUNTY OR STATE BEEN PLEDGED TO THE PAYMENT OF THIS BOND.

The income and revenues obtained by the City from the operation of the System financed in whole or in part with the proceeds of this Bond or with the proceeds of any grant made in connection with the issuance of this Bond, are hereby pledged for the repayment hereof, and the City hereby covenants and agrees that it will neither make any pledge of income or revenues from said System or the funds of any grants which it may receive in connection with the issuance of this Bond, nor dispose of the said System so financed by sale, lease or otherwise, without first obtaining the written consent of the registered Holder of this Bond.

This Bond creates a lien and charge upon the Net Revenues (as said term is defined in the Bond Ordinance) of the System, superior to all other charges of any kind or nature except that said lien is on a parity with the lien of the City's Sewer Revenue Bonds, Series 2006A, dated March 1, 2006, held by the Idaho Department of Environmental Quality. 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 "2006B Sewer Revenue 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.

The City covenants and agrees with the registered Holder hereof that it will keep and perform all the covenants of the Bond Ordinance, including its covenant against the sale or mortgage of the System or any part thereof unless provision has been made for the payment of this Bond and its covenant that it will fix, maintain and collect rents sufficient to pay operation and maintenance expenses and 100% of both the principal and interest on this Bond and any

other obligation payable from the revenues of the System (including reserves).

This Bond shall be registered as to principal and interest in the name of the original purchaser and any subsequent purchasers in a registration book in the Office of the City Clerk of the City of St. Anthony, Idaho, who shall be the Registrar, and each registration is to be noted therein by the Registrar. This Bond is transferable only upon said book, by notation thereon, by the registered owner hereof in person or by his attorney duly authorized in writing, by the surrender of this Bond, together with a written instrument of transfer satisfactory to the City, duly executed by the registered owner or his attorney duly authorized in writing; thereupon, a new Bond in the same form as this Bond shall be issued to and registered in the name of the transferee.

In the event of default in the payment of any installment due upon this Bond, or in the event of default or breach in carrying out any of the covenants and conditions contained in said Bond Ordinance, the holder hereof shall have the right to apply to a court of competent jurisdiction for the appointment of a trustee, in whom shall be vested the right to take possession of the System and so long as the City shall continue in default, to retain such possession and use, operate and manage said System, and to collect the income and revenues obtained therefrom which the trustee shall pay proportionately to all Holders of Bonds upon which payment is delinquent, after deducting therefrom the actual expenses of the Operation and Maintenance of said System. Furthermore, upon any such default or breach, the Holder of this Bond shall have all rights and remedies provided by law or authorized by law to be conferred hereby.

It is hereby certified, recited and declared that all requirements of law have been complied with by the City in the issuance of this Bond, and that the total indebtedness of said City, including that represented by this Bond, does not exceed any limitation of such indebtedness prescribed by the Constitution or the laws of the State of Idaho. It is further hereby certified, recited and declared that all conditions, acts and things essential to the validity of this Bond do exist, have happened, and have been done and that every requirement of law affecting the issue hereof has been duly complied with; that the Net Revenues to be derived from the operation of the System, including any future improvements, additions or extensions thereto, have been and are hereby pledged and will be set aside into the Bond Fund of the City to be used for the payment of principal of and interest on this Bond.

IN WITNESS WHEREOF, The City has executed this Bond by causing it to be signed by the Mayor, countersigned by the Treasurer and attested by the City Clerk, and its official seal affixed hereto as of the 14th day of November, 2006.

CITY OF ST. ANTHONY
Fremont County, Idaho

(manual or facsimile signature)

By: _____

MAYOR

COUNTERSIGNED:

(manual or facsimile signature)

By: _____

TREASURER

[SEAL]

ATTEST:

(manual or facsimile signature)

By: _____

CITY CLERK

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Name of Transferee: _____

Address: _____

Tax Identification No. _____

the within Bond and hereby irrevocably constitutes and appoints

_____ to transfer
said Bond on the books kept for registration thereof, with full power of substitution in the
premises.

Dated: _____.

Registered Owner

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

Bank, Trust Company or Member Firm
of the New York Stock Exchange

By: _____
Authorized Officer

