

1.
as revised

ORDINANCE NO. 57-18

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER AND SEWER REFUNDING AND CONSTRUCTION REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Fort Smith, Arkansas (the "City") owns and operates its (combined) water and sewer system (the "System"); and

WHEREAS, the Board of Directors of the City has determined that the System is in need of extensions, betterments and improvements in order for the City and its inhabitants to have necessary and proper water and sewer facilities and for the City to meet specific requirements set forth in the Consent Decree entered against the City for violations of the Clean Water Act (the "Improvements"); and

WHEREAS, the City has outstanding its Water and Sewer Refunding and Construction Revenue Bonds, Series 2008 (the "Bonds Refunded") authorized by Ordinance No. 29-08, adopted July 1, 2008; and

WHEREAS, the Board of Directors of the City has determined that the City should proceed with the issuance of water and sewer revenue bonds in the maximum principal amount of \$160,000,000 (the "Bonds") to finance all or a portion of the Improvements and to refund the Bonds Refunded; and

WHEREAS, the City has outstanding its Water and Sewer Refunding Revenue Bonds, Series 2011 (the "2011 Bonds"), authorized by Ordinance No. 74-11, adopted on October 4, 2011 (the "2011 Ordinance"), its Water and Sewer Refunding Revenue Bonds, Series 2012 (the "2012 Bonds"), authorized by Ordinance No. 6-12, adopted on January 17, 2012 (the "2012 Ordinance"), its Water and Sewer Refunding and Construction Revenue Bonds, Series 2015 (the "2015 Bonds"), authorized by Ordinance No. 79-15, adopted on November 17, 2015 (the "2015 Ordinance") and Water and Sewer Refunding Revenue Bonds, Series 2016 (the "2016 Bonds" and, collectively with the 2011 Bonds, the 2012 Bonds and the 2015 Bonds, the "Parity Bonds"), authorized by Ordinance No. 74-16, adopted on November 15, 2016 (the "2016 Ordinance" and, collectively with the 2011 Ordinance, the 2012 Ordinance and the 2015 Ordinance, the "Parity Ordinances"); and

WHEREAS, the parity provisions of the Parity Ordinances have been or will be met so that the Bonds can be issued on a parity of security with the Parity Bonds; and

WHEREAS, the Preliminary Official Statement offering the Bonds for sale (the "Preliminary Official Statement") has been presented to and is before this meeting; and

WHEREAS, the Continuing Disclosure Agreement between the City and BancorpSouth Bank, Stuttgart, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the Bonds, has been presented to and is before this meeting; and

WHEREAS, the City is making arrangements for the sale of the Bonds to Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of a group of underwriters (the "Underwriters"), pursuant to a Bond Purchase Agreement (the "Purchase Agreement") that has been presented to and is before this meeting; and

WHEREAS, payment of the scheduled principal of and interest on the Bonds when due on all or a portion of the Bonds (the "Insured Bonds") will be guaranteed by Build America Mutual Assurance Company, or any successor thereto or assignee thereof (the "Insurer"), pursuant to a municipal bond insurance policy (the "Insurance Policy"), as set forth in the Insurance Policy; and

WHEREAS, the Insurer will also issue a municipal bond debt service reserve insurance policy (the "Reserve Policy") in order to provide a debt service reserve for the Bonds; and

WHEREAS, the Debt Service Reserve Agreement, relating to the Reserve Policy, between the City and the Insurer (the "Reserve Agreement") has been presented to and is before this meeting;

NOW THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Fort Smith, Arkansas:

Section 1. The refunding of the Bonds Refunded, by use of the proceeds of the Bonds and other available funds, is hereby authorized. The Bonds Refunded shall be redeemed in full on October 1, 2018 or the earliest practical date thereafter. The Mayor and other officials of the City are hereby authorized to take, or cause to be taken, all action necessary to accomplish the refunding and to execute all required contracts.

Section 2. The Preliminary Official Statement in substantially the form presented to the meeting is hereby approved and the use of the Preliminary Official Statement in connection with the sale of the Bonds is hereby authorized, and the Mayor is hereby authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City for use in connection with the sale of the Bonds.

Section 3. The Board of Directors hereby finds and declares that the period of usefulness of the System will be more than 20 years, which is longer than the term of the Bonds.

Section 4. The Purchase Agreement, in substantially the form submitted to this meeting, is approved and the Bonds are hereby sold to the Underwriters at a purchase price which shall include an underwriter's discount not greater than 0.50% of the par amount of the Bonds (the "Purchase Price"). The Mayor is authorized to execute and deliver the Purchase

Agreement for and on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Purchase Agreement.

Section 5. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Arkansas Code of 1987 Annotated, Title 14, Chapter 234, Subchapter 2, Title 14, Chapter 235, Subchapter 2, and Title 14, Chapter 164, Subchapter 4, and applicable decisions of the Supreme Court of the State of Arkansas, including City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2d 12 (1946), City of Fort Smith, Arkansas Water and Sewer Refunding and Construction Revenue Bonds, Series 2018 are hereby authorized and ordered issued in the maximum principal amount of \$160,000,000 for the purpose of financing all or a portion of the costs of the Improvements and refunding the Bonds Refunded, providing a debt service reserve, paying necessary expenses incidental thereto and to the issuance of the Bonds and paying the premium for insuring the Insured Bonds. The Bonds shall be dated the date of their delivery to the Underwriters, with interest payable semiannually on April 1 and October 1 of each year, commencing April 1, 2019, shall be numbered consecutively from 1 upward, in order of issuance, and shall be in the denomination of \$5,000 or an integral multiple thereof. The Bonds shall have a true interest cost (after taking into account original issue discount and premium but excluding underwriter's discount and costs of issuing the Bonds) not greater than 5.0%, shall have a weighted average maturity (taking into account mandatory sinking fund redemption, if any) of not greater than 15 years and shall mature not later than October 1, 2038. The interest rates, maturities, principal amount per maturity and any mandatory sinking fund installments of the Bonds shall be established by an ordinance to be adopted by the Board of Directors prior to the Bonds being issued (the "Supplemental Ordinance"). The Supplemental Ordinance shall also designate which Bonds are the Insured Bonds. The Insured Bonds must consist of entire maturities of the Bonds or all of the Bonds with a maturity having the same interest rate if less than a maturity. The first optional redemption date for the Bonds shall be included in the Supplemental Ordinance. The latest date for optional redemption shall be October 1, 2028. The redemption price for optional redemption shall be par plus accrued interest, without premium.

Payment of each installment of interest shall be made to the person in whose name the Bond is registered on the registration books of the City maintained by BancorpSouth Bank, Stuttgart, Arkansas, as Trustee (the "Trustee"), at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such Bond subsequent to such Record Date and prior to such interest payment date.

The Bonds shall be registered initially in the name of Cede & Co., as nominee for the Depository Trust Company ("DTC"), which shall be considered to be the registered owner of the Bonds for all purposes under this Ordinance, including, without limitation, payment by the City of principal of, redemption price, premium, if any, and interest on the Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten Bond for each stated maturity date and interest rate which shall be immobilized in the custody of or on behalf of DTC with the beneficial owners having no right to receive the Bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership of beneficial interests in the Bonds by book-entry on

the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book-entry, the City having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Bonds. The Bonds as such shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository, without further action by the City.

If any securities depository determines not to continue to act as a securities depository for the Bonds for use in a book-entry system, the City may establish a securities depository/book-entry system relationship with another securities depository. If the City does not or is unable to do so, or upon request of the beneficial owners of all outstanding Bonds, the City and the Trustee, after the Trustee has made provision for notification of the beneficial owners by the then securities depository, shall permit withdrawal of the Bonds from the securities depository, and authenticate and deliver Bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the securities depository or its nominee, all at the cost and expense (including costs of printing definitive Bonds) of the City, if the City fails to maintain a securities depository/book-entry system, or of the beneficial owners, if they request termination of the system.

Prior to issuance of the Bonds, the City shall have executed and delivered to DTC a written agreement (the "Representation Letter") setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the City with respect to the Bonds so long as the Bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the Bonds other than the registered owners, as shown on the registration books kept by the Trustee. The Trustee shall take all action necessary for all representations of the City in the Representation Letter with respect to the Trustee to at all times be complied with.

The authorized officers of the Trustee and the City shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a securities depository for all or any portion of the Bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of Bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Each Bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from its dated date, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 7 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Certificate on any Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the Bonds.

In case any Bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new Bond of like date, maturity, interest rate and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a Bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such Bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. In the event any such Bond shall have matured, instead of issuing a new Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Bond under this Section, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The City shall keep or cause to be kept books for the registration and for the transfer of the Bonds as provided herein and in the Bonds. The Trustee shall act as the bond registrar. Each Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered Bond or Bonds of the same maturity and interest rate, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

No charge shall be made to any owner of any Bond for the privilege of transfer or exchange, but any owner of any Bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. The City shall not be required to transfer or exchange any Bonds selected for redemption in whole or in part.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest of any Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Section 6. The Bonds shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City. The Bonds, together with interest thereon, shall be payable solely out of the 2018 Water and Sewer Revenue Bond Fund, hereafter described, and shall be a valid claim of the owners thereof only against such fund and the amount of revenues pledged thereto, which revenues are hereby pledged and mortgaged for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal, premium, if any, interest and Trustee's fees on and in connection with the Bonds and to make other disbursements authorized hereby.

The pledge of System revenues in favor of the Bonds is on a parity with the pledge of System revenues in favor of the Parity Bonds. The Bonds shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Payment of the scheduled principal of and interest on the Insured Bonds when due (by stated maturity or by scheduled mandatory redemption) is guaranteed by the Insurer, pursuant to the Insurance Policy, as set forth in the Insurance Policy.

Section 7. The Bonds shall be in substantially the following form and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Bond)

REGISTERED

REGISTERED

No. _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF SEBASTIAN
CITY OF FORT SMITH
WATER AND SEWER
REFUNDING AND CONSTRUCTION REVENUE BOND
SERIES 2018

Interest Rate: _____%

Maturity Date: October 1, ____

Dated Date: _____, 2018

Registered Owner: Cede & Co.

Principal Amount: _____ Dollars

CUSIP No.: _____

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fort Smith, Arkansas (the "City"), for value received, hereby promises to pay, but solely from the source as hereinafter provided and not otherwise, to the Registered Owner shown above, upon the presentation and surrender hereof at the principal corporate office of BancorpSouth Bank, in Stuttgart, Arkansas, or its successor or successors, as Trustee (the "Trustee"), on the Maturity Date shown above, the Principal Amount shown above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and to pay by check or draft interest thereon, but solely from the source as hereinafter provided and not otherwise, in like coin or currency, at the Interest Rate per annum shown above, payable semiannually on the 1st days of April and October of each year, commencing April 1, 2019 until payment of such principal sum or, if this Bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this Bond. Payment of each installment of interest shall be made to the person in whose name this Bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this Bond subsequent to such Record Date and prior to such interest payment date. Interest on this Bond is payable from the interest payment date next preceding the date on which this Bond is authenticated unless this Bond is authenticated on an interest payment date, in which case it shall bear interest from such date, or unless this Bond is authenticated prior to April 1,

2019, in which case it shall bear interest from the Dated Date shown above, or unless this Bond is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication of this Bond interest is in default hereon, in which case it shall bear interest from the date to which interest has been paid.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

This Bond is one of an issue of City of Fort Smith, Arkansas Water and Sewer Refunding and Construction Revenue Bonds, Series 2018 aggregating _____ Thousand Dollars (\$ _____) in principal amount (the "Bonds"), and is issued for the purpose of financing all or a portion of the cost of acquiring, constructing and equipping extensions, betterments and improvements to the City's municipal water and sewer (combined) system (the "System") and refunding the City's outstanding Water and Sewer Refunding and Construction Revenue Bonds, Series 2008.

THE BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY TITLE 14, CHAPTER 234, SUBCHAPTER 2, TITLE 14, CHAPTER 235, SUBCHAPTER 2 AND TITLE 14, CHAPTER 164, SUBCHAPTER 4 OF THE ARKANSAS CODE OF 1987 ANNOTATED AND APPLICABLE DECISIONS OF THE SUPREME COURT OF THE STATE OF ARKANSAS, INCLUDING CITY OF HARRISON V. BRASWELL, 209 ARK. 1094, 194 S.W.2d 12 (1946) AND PURSUANT TO ORDINANCE NO. _____, DULY ADOPTED ON _____, 2018 AND ORDINANCE NO. _____, DULY ADOPTED ON _____, 2018 (COLLECTIVELY, THE "AUTHORIZING ORDINANCE"), AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN ANY CONSTITUTIONAL OR STATUTORY LIMITATION. The Bonds are not general obligations of the City but are special obligations secured by and payable solely from the revenues derived from the operation of the System. The pledge of System revenues in favor of the Bonds is on a parity with the pledge in favor of the City's Water and Sewer Refunding Revenue Bonds, Series 2011, Water and Sewer Refunding Revenue Bonds, Series 2012, Water and Sewer Refunding and Construction Revenue Bonds, Series 2015 and Water and Sewer Refunding Revenue Bonds, Series 2016. An amount of System revenues sufficient to pay the principal of and interest on the Bonds has been duly pledged and set aside into the 2018 Water and Sewer Revenue Bond Fund established by the Authorizing Ordinance. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which the Bonds are issued, of the nature and extent of the security for the Bonds, the

reservation of the power to issue additional (parity) bonds, and the rights and obligations of the City, the Trustee and the owners of the Bonds.

The Bonds are subject to optional and mandatory sinking fund redemption prior to maturity as follows:

1. The Bonds may be redeemed at the option of the City, from funds from any source, in whole or in part at any time, on and after _____ 1, 20 ____, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date. If fewer than all of the Bonds shall be called for redemption, the particular maturities and interest rates to be redeemed shall be selected by the City in its discretion. If fewer than all of the Bonds of any one maturity and interest rate shall be called for redemption, the particular Bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

2. To the extent not previously redeemed, the Bonds maturing on October 1 in the year _____ are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on October 1 in the years and in the amounts set forth below, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption:

In case any outstanding Bond is in a denomination greater than \$5,000, each \$5,000 of face value of such Bond shall be treated as a separate Bond of the denomination of \$5,000.

Notice of redemption identifying the Bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed shall be given by the Trustee, not less than 30 nor more than 60 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid; or by other standard means, including facsimile transmissions and electronic communications, to all registered owners of Bonds to be redeemed. Failure to send an appropriate notice or any such notice to one or more registered owners of Bonds to be redeemed shall not affect the validity of the proceedings for redemption of other Bonds as to which notice of redemption is duly given in proper and timely fashion. All such Bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date. With respect to notice of redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Trustee prior to the giving of such notice, such notice shall state that such redemption shall be conditional upon the receipt of such moneys by the Trustee on or prior to the date fixed for such redemption.

The City and the Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable only as fully registered bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, Bonds may be exchanged for a like aggregate principal amount of Bonds of the same maturity and interest rate of other authorized denominations.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Bonds, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the above referred to revenues pledged to the payment of the principal of and premium, if any, and interest on the Bonds as the same become due and payable will be sufficient in amount for that purpose.

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

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas has caused this Bond to be executed by its Mayor and City Clerk and its corporate seal to be impressed on this Bond, all as of the Dated Date shown above.

CITY OF FORT SMITH, ARKANSAS

ATTEST:

_____ By _____
City Clerk Mayor

(SEAL)

STATEMENT OF INSURANCE

[A Statement of Insurance provided by the Insurer shall be placed on the Insured Bonds.]

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds designated Water and Sewer Refunding and Construction Revenue Bonds, Series 2018, in and issued under the provisions of the within mentioned Authorizing Ordinance.

BANCORPSOUTH BANK
Stuttgart, Arkansas
TRUSTEE

By _____
Authorized Signature

Date of Authentication: _____

(A Form of Assignment shall be
attached to each Bond.)

Section 8. (a) The rates charged for services of the System heretofore fixed, and the conditions, rights and obligations pertaining thereto, as set out in the ordinances fixing such rates, are hereby ratified, confirmed and continued.

The City covenants that the rates shall never be reduced while any of the Bonds are outstanding unless there is obtained from an independent certified public accountant ("Accountant") a certificate that the Net Revenues of the System (being defined as gross revenues of the System less the amounts required to pay the costs of operation, maintenance and repair of the System, including all expense items properly attributable to the operation and maintenance of the System in accordance with generally accepted accounting principles applicable to municipal water and sewer systems (excluding depreciation, interest and amortization expenses)), with the reduced rates, will be at least equal to 110% of the maximum annual principal and interest requirements on all bonds payable from revenues of the System ("System Bonds"), plus the amount needed to make all deposits required to be made into the Depreciation Fund (hereinafter identified) and any debt service reserves for System Bonds and to reimburse the Insurer and the insurers of System Bonds for any amounts owed in connection with debt service reserve fund insurance policies or surety bonds for System Bonds, including the Reserve Policy (collectively, the "Debt Service Reserve Policies"). The City further covenants that the rates shall, if and when necessary, from time to time, be increased in such manner as will produce net revenues at least equal to 110% of the current year's debt service on all System Bonds and the amount needed to make the deposits into the Depreciation Fund and any debt service reserves for System Bonds and to reimburse the Insurer and the insurers of any System Bonds for any amounts owed in connection with Debt Service Reserve Policies.

(b) The System shall be continuously operated as a revenue producing undertaking, and all moneys received from its operation shall be deposited in such depository or depositories for the City as may be lawfully designated from time to time by the City, subject, however, to the

giving of security as now or as hereafter may be required by law, and provided that such depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC").

So long as the Bonds are outstanding or any amounts are due and payable to the Insurer, the City shall not sell, lease, transfer or otherwise dispose of the System or any material portion thereof, except upon obtaining the prior written consent of the Insurer.

Section 9. All revenues derived from the operation of the System shall be paid into a special fund heretofore created and designated "Water and Sewer Fund." The revenues in the Water and Sewer Fund shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on the Bonds and other System Bonds, to the maintenance of the debt service reserves at the required level, to pay the Insurer and insurers of System Bonds any amounts owed in connection with bond insurance policies, debt service reserve fund insurance policies or surety bonds for the Bonds and other System Bonds, to the providing of the Depreciation Fund, and otherwise as described herein.

Section 10. There shall first be paid from the Water and Sewer Fund into a special fund heretofore created and designated "Water and Sewer Operation and Maintenance Fund" (the "Operation and Maintenance Fund"), in a bank selected by the City that is a member of FDIC, on the first business day of each month, an amount sufficient to pay the reasonable and necessary monthly expenses of operation, repair and maintenance of the System for such month and from which disbursements shall be made only for those purposes. Fixed annual charges such as insurance premiums and the cost of major repair and maintenance expenses may be computed and set up on an annual basis, and one-twelfth (1/12) of the amount thereof may be paid into the Operation and Maintenance Fund each month.

If in any month for any reason there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of the deficiency shall be added to the amount otherwise required to be transferred and paid into the fund the next succeeding month. If in any fiscal year a surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount which shall be necessary to defray the reasonable and necessary costs of operation and maintenance of the System during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred into bond funds for System Bonds or into the Depreciation Fund, to the extent of any deficit therein, and in the absence of any such deficit, to the Water and Sewer Fund.

Section 11. After making the deposit into the Operation and Maintenance Fund, there shall next be transferred and paid from the Water and Sewer Fund, pro rata, into the bond funds (and debt service reserves therein) being maintained in connection with the Parity Bonds and any additional parity bonds (the "Parity Bond Funds") and into a special fund, created by the Authorizing Ordinance and designated "2018 Water and Sewer Revenue Bond Fund" (the "Bond Fund") in a bank selected by the City that is a member of FDIC, the sums in the amounts and at the times set forth below. The obligation to make the required monthly deposits into the Bond Fund and the Parity Bond Funds shall rank on a parity of security.

There shall be paid into the Parity Bond Funds the required monthly deposits pursuant to the Parity Bond Ordinances and any additional parity bonds.

There shall be paid into the Bond Fund until all outstanding Bonds, with interest thereon, have been paid in full or provision made for such payment, on the first business day of each month commencing in October 2018 (i) a sum equal to 1/6 of the next installment of interest on the Bonds and a sum equal to 1/12 of the next installment of principal due during the then next twelve months (either at maturity or in accordance with any mandatory redemption provisions) on the Bonds, plus (ii) an amount sufficient to provide for Trustee's fees, on the Bonds.

If the revenues of the System are insufficient to make the required payment on the first business day of any month into the Bond Fund, the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the first business day of the next month.

There is established and shall be maintained within the Bond Fund a "Debt Service Reserve Account." The Reserve Policy, which shall be in the face amount of the lesser of 10% of the principal amount of the Bonds and the maximum annual principal and interest requirements on the Bonds, shall be credited to the Debt Service Reserve Account. There shall be no cash requirement for the Debt Service Reserve Account. The Debt Service Reserve Account will only secure the Bonds and will not secure the Parity Bonds or any additional parity bonds.

If for any reason there shall be a deficiency in payments made into the Bond Fund so that there are unavailable sufficient moneys therein to pay the principal of and interest on the Bonds as the same become due, any sums received from the Reserve Policy in the Debt Service Reserve Account shall be used to the extent necessary for the payment of the principal of or interest on the Bonds. The City shall reimburse the Insurer for all amounts drawn under the Reserve Policy in accordance with the Reserve Agreement and as hereinafter provided. The repayment of Reserve Policy Payments (as defined in Section 26 hereof) shall be made immediately after the payment of debt service on the Bonds, Parity Bonds and any additional parity bonds issued under Section 14 hereof and an equal and parity basis to the repayment or deposits of any amounts to any debt service reserves for Parity Bonds or any additional parity bonds, including reimbursement of providers of any Debt Service Reserve Policies for Parity Bonds or additional bonds.

If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments during the next succeeding twelve-month period and reimbursing the Insurer for all amounts due and payable to the Insurer in connection with the Insurance Policy and/or the Reserve Policy, such surplus (1) shall be applied at the direction of the City to the payment of the principal of and interest on Bonds that may be called for redemption prior to maturity or (2) shall be paid to the City and deposited into the Water and Sewer Fund. Otherwise moneys in the Bond Fund shall be used solely for the payment of principal and interest on the Bonds, Trustee's fees and amounts due the Insurer.

The City Treasurer shall withdraw from the Bond Fund and deposit with the Trustee at least five (5) business days prior to the due date of any Bond or interest payable thereon, at maturity or redemption prior to maturity, an amount equal to the amount of such Bond or interest payment for the sole purpose of paying the same, together with the Trustee's fee.

Section 12. There shall next be paid from the Water and Sewer Fund into a fund heretofore created and designated "Water and Sewer Depreciation Fund" (the "Depreciation Fund"), in a bank, selected by the City, that is a member of the FDIC, on the first business day of each month while any of the Bonds are outstanding, a sum equal to three percent (3%) of the gross revenues of the System for the then preceding month plus \$5,000 per month until there is accumulated the sum of \$500,000. When the sum of \$500,000 has been accumulated, the payments may be discontinued. If the moneys in the Depreciation Fund fall below \$500,000, the monthly payments shall resume until the balance again reaches \$500,000. The moneys in the Depreciation Fund shall be used solely for the purpose of providing for replacements made necessary by the depreciation of the System and for the purpose of paying costs of damage caused by unforeseen catastrophes, except that moneys in the Depreciation Fund shall be used to the extent necessary at any time to prevent default in the payment of principal, interest, and Trustee's fees on the Bonds and any other System Bonds.

If in any fiscal year a surplus shall be accumulated in the Depreciation Fund over and above the amount which shall be necessary to cover probable replacement costs during the current fiscal year and the next ensuing fiscal year, such surplus may be transferred to the Bond Fund, to the extent of any deficit therein, and, in the absence of any such deficit, to the Water and Sewer Fund.

Section 13. Any surplus in the Water and Sewer Fund, after making all required disbursements and making full provision for the funds herein described, including the repayment of Reserve Policy Payments (as defined in Section 26 hereof) and Bond Insurer Reimbursement Amounts (as defined in Section 27 hereof), shall be used for payment of all other amounts owed the Insurer (including Reserve Policy Expenses and Administrative Costs, each as defined in Sections 26 and 27 hereof) and the insurers of System Bonds and may be used, at the option of the City, for the redemption of System Bonds prior to maturity in accordance with their respective redemption provisions; for constructing extensions, betterments and improvements to the System; or for any other lawful municipal purpose.

Section 14. As long as any of the Bonds are outstanding, the City shall not issue or attempt to issue any bonds claimed to be entitled to a priority of lien on the revenues of the System over the lien securing the Bonds.

The City may issue additional bonds to finance or refinance the cost of extensions, betterments and improvements to the System. However, the City may not authorize or issue any such additional bonds ranking on a parity of security with outstanding Bonds, unless and until either: (1) there shall have been procured and filed with the Trustee a statement by an Accountant reciting that, based upon necessary investigation, the Net Revenues of the System for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such

additional bonds shall equal not less than 125% of the average annual principal and interest requirements on the System Bonds then outstanding and the additional bonds proposed to be issued; or (2) there shall have been procured and filed with the Trustee a statement by an Accountant reciting, based upon necessary investigation, that the Net Revenues of the System for the next ensuing fiscal year as reflected by a certificate of a duly qualified consulting engineer not in the regular employ of the City and approved by the Trustee, and taking into consideration any rate increase, shall be equal to not less than 130% of the average annual principal and interest requirements on all of the System Bonds then outstanding and the additional bonds then proposed to be issued. For purposes of the required computation, there may be added to the Net Revenues of the System of the fiscal year immediately preceding the fiscal year in which it is proposed to issue additional bonds the following: if prior to the issuance of the additional bonds and subsequent to the first day of such preceding fiscal year the City shall have increased the rates charged for water services or sewer services, the additional net revenues which would have been received from the operation of the System had the increase been in effect throughout such fiscal year. For purposes of the required computation, there shall be added to the average annual principal and interest requirement any amounts due and owing under any Debt Service Reserve Policies.

The additional bonds the issuance of which is restricted and conditioned as hereinabove described shall not be deemed to include other obligations the security and source of payment of which is subordinate and subject to the priority of the Bonds.

Section 15. The City will keep proper books of accounts and records (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the operation of the System, and such books shall be available for inspection by the owner of any of the Bonds at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an Accountant at least once each year. A copy of the audit shall be delivered to the Trustee not later than 180 days after the end of each fiscal year and shall be made available to any Bondholder making request therefor. In the event that the City fails or refuses to make the audit, the Trustee or any owner of the Bonds, may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 16. The City covenants that it will maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. The City agrees that, to the extent that comparable protection is not otherwise provided to the satisfaction of the Trustee, it will insure and at all times keep insured, in the amount of the full insurable value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State of Arkansas to assume the risk thereof, properties of the System, to the extent that such properties would be covered by insurance by private companies engaged in similar types of businesses, against loss or damage thereto from fire and other perils included in extended coverage insurance in effect in Arkansas. The insurance policies are to carry a clause making them payable to the Trustee as its interest may appear, and are either to be placed in the custody of the Trustee or satisfactory evidence of such insurance shall be filed with the Trustee. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction,

replacement or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Water and Sewer Fund, and if such proceeds shall be insufficient for such purposes the deficiency shall be supplied first from moneys in the Depreciation Fund and second from moneys in the Operation and Maintenance Fund and third from surplus moneys in the Water and Sewer Fund. Nothing shall be construed as requiring the City to expend any moneys for operation and maintenance of the System or for premiums on its insurance which are derived from sources other than the operation of the System, but nothing shall be construed as preventing the City from doing so.

Section 17. The Bonds shall be subject to redemption prior to maturity as set forth in Section 7 hereof. The City covenants and agrees to cause to be paid into the Bond Fund sufficient funds to redeem Bonds subject to mandatory sinking fund redemption in the amounts and on the dates set forth in the Bonds. Therefore, in calculating the monthly payments to be deposited into the Bond Fund, the term “next installment of principal” shall include the principal of the Bonds maturing on the next principal payment date and the principal of the Bonds which will be redeemed in accordance with the mandatory sinking fund redemption provisions of the Bonds on the next interest payment date scheduled for such redemption.

Section 18. There shall be a statutory mortgage lien upon the water facilities which are part of the System (including all extensions, improvements and betterments now or hereafter existing) which shall exist in favor of the owners of the Bonds, and each of them and such water facilities shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of the Bonds, provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of the State of Arkansas in City of Harrison v. Braswell, supra.

Section 19. (a) Subject to the provisions of subparagraph (i) below, if there be any default in the payment of the principal of or interest on any of the Bonds, if the City declares bankruptcy, or if the City defaults in any Bond Fund requirements or in the performance of any of the other covenants contained and set forth in this Ordinance, the Trustee may, and upon the written request of (1) the Insurer or (2) with the consent of the Insurer, the registered owners of not less than 10% in principal amount of the Bonds shall, by proper suit compel, by mandamus or otherwise, the performance of the duties of the officials of the City under the laws of Arkansas. And, in the case of a default in the payment of the principal of and interest on any of the Bonds, the Trustee may, and upon the written request of (1) the Insurer or (2) with the consent of the Insurer, the registered owners of not less than 10% in principal amount of the Bonds shall, apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the registered owners with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, maintenance and repair and to pay any Bonds and interest outstanding and to apply the revenue in conformity with the laws of Arkansas and with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the City. The

rights of the Insurer shall cease under this paragraph (a) when there are no Insured Bonds outstanding under this Ordinance.

(b) No owner of any of the outstanding Bonds shall have any right to institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Ordinance or under the laws of Arkansas unless (1) such owner or the Trustee shall have given written notice of such default to the Insurer and (2) such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the laws of Arkansas, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more owners of the Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of all outstanding Bonds, and that any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided. The rights of the Insurer shall cease under this paragraph (b) when there are no Insured Bonds outstanding under this Ordinance.

(c) All rights of action under this Ordinance or under any of the Bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the owners of the Bonds, subject to the provisions of this Ordinance.

(d) No remedy herein conferred upon or reserved to the Trustee, the Insurer or to the owners of the Bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law.

(e) No delay or omission of the Trustee or of any owners of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Ordinance to the Trustee and to the owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(f) The Trustee may, and upon the written request of the owners of not less than 50% in principal amount of the Bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

(g) The cost of any proceedings brought to enforce the Bonds or any provision of this Ordinance, including reasonable attorney's fees, shall be a debt of the City and shall be paid by the City; provided, however, that such proceedings shall have resulted in a successful determination, ruling, order or agreement for the Trustee or the Bondholders.

(h) After payment of reasonable expenses of the Trustee, the funds realized upon default shall be applied to the payment of expenses of the City and arbitrage rebate only after payment of past due and current debt service on the Bonds.

(i) Notwithstanding the above, the Insurer shall be deemed to be the sole holder of the Insured Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the owners of the Insured Bonds are entitled to take pursuant to this Ordinance.

Section 20. (a) This Ordinance shall constitute a binding contract between the City and the owners of the outstanding Bonds. The City will at all times strictly adhere to the terms and provisions hereof and will fully discharge all of its obligations hereunder. No variation or change in the undertaking herein set forth shall be made while any of the Bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(b) The Trustee may consent to any variation or change in this Ordinance to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto or, with the prior written consent of the Insurer while the Insured Bonds are outstanding, to make any change that the Trustee determines is not to the material prejudice of the owners of the Bonds.

(c) The Insurer, while the Insured Bonds are outstanding, and the owners of not less than 75% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (i) an extension of the maturity of the principal of or the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or (iii) the creation of a lien or pledge superior to the lien and pledge created by this Ordinance, or (iv) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (v) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

(d) While the Insured Bonds are outstanding, the City shall send copies of any amendments or supplements to this Ordinance to the Insurer and the rating agencies which have assigned a rating to the Insured Bonds. Any amendments or supplements to this Ordinance shall require the prior written consent of the Insurer with the exception of amendments or supplements: (i) to cure any ambiguity or formal defect or omissions or to correct any inconsistent provisions in this Ordinance or in any supplement thereto, or (ii) to grant or confer upon the holders of the Insured Bonds any additional rights, remedies, powers, authority or security that may lawfully be granted or conferred upon the holders of the Insured Bonds, or (iii) to add to the conditions, limitations and restrictions on the issuance of bonds or other obligations under the provisions of this Ordinance other conditions, limitations and restrictions thereafter to be observed, or (iv) to add to the covenants and agreements of the City in this Ordinance other covenants and agreements thereafter to be observed by the City or to surrender any right or power therein reserved to or conferred upon the City, or (v) to issue additional parity bonds pursuant to Section 14 hereof.

Section 21. (a) Moneys held for the credit of the Bond Fund shall be invested and reinvested pursuant to the direction of the City in (i) direct obligations of the United States of America (including any such securities issued or held in book-entry form on the books of the Department of the Treasury of the United States of America) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America (“Government Securities”) or (ii) in demand deposits or certificates of deposit of banks, including the Trustee, which are insured by the FDIC, or, if in excess of insurance coverage, collateralized by Government Securities or other securities authorized by Arkansas law to secure public deposits, held by a third party and in which securities the Trustee has a perfected security interest, or (iii) savings accounts, deposit accounts or money market deposits in banks, including the Trustee, which are fully insured by the FDIC, or (iv) bonds or notes issued by the State or a municipality or county thereof which are rated by Moody’s and S&P in one of the highest rating categories assigned by such agencies, or (v) money market funds comprised exclusively of Government Securities and registered under the Investment Company Act of 1940 whose shares are registered under the Securities Act of 1933 and having a rating by S&P of “AAAm-G,” “AAAm,” or “AAm” (collectively, “Permitted Investments”), all of which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys will be required for payment of the principal of or interest on the Bonds when due.

(b) Moneys held for the credit of the Construction Fund (hereinafter identified) may be invested and reinvested pursuant to the direction of the City in Permitted Investments or other investments permitted by Arkansas law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(c) Obligations so purchased as an investment of moneys in any fund established by this Ordinance shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund.

Section 22. Any Bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such Bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) cash sufficient to make such payment and/or (2) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America ("Investment Securities") (provided that such deposit will not affect the tax exempt status of the interest on any of the Bonds or cause any of the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code")), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee pertaining thereto shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of any Bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such Bonds, all such moneys and/or Investment Securities.

When all the Bonds shall have been paid within the meaning of this Ordinance, if the Trustee has been paid its fees and expenses and if any arbitrage rebate due the United States Treasury has been paid or provided for to the satisfaction of the Trustee, and if there are not amounts due the Insurer with respect to the Reserve Policy and the Insurance Policy, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such Bonds to be paid over or delivered to or at the direction of the City. In determining the sufficiency of the deposit of Investment Securities there shall be considered the principal amount of such Investment Securities and interest to be earned thereon until the maturity of such Investment Securities.

At least three business days prior to any defeasance with respect to the Insured Bonds, the City shall, unless waived by the Insurer, deliver to the Insurer draft copies of an escrow agreement, an opinion of bond counsel regarding the validity and enforceability of the escrow agreement and the defeasance of the Insured Bonds and a verification report (a "Verification Report") prepared by a nationally recognized independent financial analyst or firm of certified public accountants regarding the sufficiency of the escrow fund. Such opinion shall be addressed to the Insurer and shall be in form and substance satisfactory to the Insurer. Such Verification Report shall be in the form and substance satisfactory to the Insurer and, unless waived by the Insurer, shall either be addressed to the Insurer or shall include a statement to the effect that such Verification Report may be relied upon by the Insurer. In addition, the escrow agreement shall provide that:

(1) Any substitution of securities following the execution and delivery of the escrow agreement shall require the delivery of a Verification Report, an opinion of bond counsel that

such substitution will not adversely affect the exclusion (if interest on the Insured Bonds is excludable) from gross income of the holders of the Insured Bonds of the interest on the Insured Bonds for federal income tax purposes and the prior written consent of the Insurer, which consent will not be unreasonably withheld.

(2) The City will not exercise any prior optional redemption of Insured Bonds secured by the escrow agreement or any other redemption other than mandatory sinking fund redemptions unless (i) the right to make any such redemption has been expressly reserved in the escrow agreement and such reservation has been disclosed in detail in the official statement for the refunding bonds, and (ii) as a condition to any such redemption there shall be provided to the Insurer a Verification Report as to the sufficiency of escrow receipts without reinvestment to meet the escrow requirements remaining following any such redemption.

(3) The City shall not amend the escrow agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of the Insurer.

Section 23. When the Bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee. The Trustee shall authenticate the Bonds and deliver them to or at the direction of the Underwriters upon payment of the Purchase Price, a portion of which shall be paid directly by the Underwriters to the Insurer as payment of the premiums due the Insurer for the Reserve Policy and the Insurance Policy. The Trustee shall disburse the Purchase Price received by it as set forth in detail in a letter of delivery instructions signed by the Mayor and delivered to the Trustee (the "Delivery Instructions"), as follows:

(a) The amount of the Purchase Price necessary to accomplish the refunding of the Bonds Refunded shall be deposited with the trustee for the Bonds Refunded.

(b) The expenses of issuing the Bonds shall be paid from the Purchase Price.

(c) The Trustee shall deposit the balance of the Purchase Price in a special fund in the name of the City hereby created and designated "Water and Sewer Bond Construction Fund, Series 2018" (the "Construction Fund") established with the Trustee. The moneys in the Construction Fund shall be disbursed in payment of costs of accomplishing the Improvements, paying necessary expenses incidental thereto and paying expenses of issuing the Bonds and refunding the Bonds Refunded. Disbursements shall be on the basis of requisitions which shall contain at least the following information: the person to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each requisition must be signed by the City Administrator or Deputy City Administrator and the City Treasurer. The Trustee shall issue its check upon the Construction Fund payable to the person, firm or corporation designated in the requisition. The Trustee shall keep accurate records as to all payments made on the basis of requisitions.

If moneys remain in the Construction Fund after the Improvements are completed and after all required expenses have been paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof,

the Mayor shall file a certificate to such effect with the Trustee and the Trustee shall transfer any remaining balance to the Bond Fund.

Section 24. All moneys in the bond fund for the Bonds Refunded are hereby appropriated and shall be used as set forth in the Delivery Instructions for one or both of the following purposes: to accomplish the refunding of the Bonds Refunded and to pay a portion of the interest on the Bonds due April 1, 2019.

Section 25. The Trustee shall only be responsible for the exercise of good faith and reasonable prudence in the execution of its trust. The recitals in this Ordinance and in the face of the Bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the Insurer or by the owners of not less than 10% in principal amount of the Bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by 30 days' notice in writing to the City Clerk, the Insurer and the owners of the Bonds then outstanding. At any time, with or without cause, the Insurer, the City or a majority in principal amount of the Bonds may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the City shall appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the City Clerk and the Insurer. The original Trustee and any successor Trustee shall execute a written acceptance of the trust imposed upon it or them by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the Bonds agree. Such written acceptance shall be filed with the City Clerk and a copy thereof shall be placed in the bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee. No resignation or removal of the Trustee shall become effective until a successor, acceptable to the Insurer, has been appointed and has accepted the duties of Trustee hereunder. The rights of the Insurer under this Section 25 shall cease when there are no longer any Insured Bonds outstanding under this Ordinance.

The Insurer shall receive prior written notice of any name change of the Trustee or the resignation or removal of the Trustee. Any trustee must be (A) a national banking association that is supervised by the Office of the Comptroller of the Currency and has at least \$250 million of assets, (B) a state-chartered commercial bank that is a member of the Federal Reserve System and has at least \$1 billion of assets or (C) otherwise approved by the Insurer in writing.

Section 26. (a) The City shall repay any draws under the Reserve Policy and pay all related reasonable expenses incurred by the Insurer. Interest shall accrue and be payable on such draws from the date of payment by the Insurer at the Late Payment Rate. "Late Payment Rate" means the lesser of (A) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, at its principal office in the City of New York, New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Bonds and (B) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event

JPMorgan Chase Bank ceases to announce its Prime Rate publicly, the Prime Rate shall be the publicly announced prime or base lending rate of such other bank, banking association or trust company bank as the Insurer, in its sole and absolute discretion, shall specify.

Repayment of draws under the Reserve Policy and accrued interest thereon at the Late Payment Rate ("Reserve Policy Payments") and payment of Reserve Policy Expenses (as defined below) shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Reserve Policy Payments and Reserve Policy Expenses (collectively, "Reserve Policy Costs") related to such draw.

Amounts in respect of Reserve Policy Costs paid to the Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments, if any, in the Debt Service Reserve Account, and all other System revenues available to pay debt service on the Bonds, shall be transferred to the Bond Fund for payment of the debt service on the Bonds before any drawing may be made on the Reserve Policy.

Payment of any Reserve Policy Cost shall be made prior to replenishment of any cash amounts in the Debt Service Reserve Account. Draws on the Reserve Policy shall be made after applying all available cash and investment, if any, in the Debt Service Reserve Account.

The Policy Limit (as defined in the Reserve Policy) shall automatically and irrevocably be reduced from time to time by the amount of any reduction of the required level of the Debt Service Reserve Account.

(b) Draws under the Reserve Policy may only be used to make payments on the Bonds.

(c) If the City shall fail to pay any Reserve Policy Costs in accordance with the requirements of paragraph (a) above, the Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Ordinance other than remedies which would adversely affect owners of the Bonds.

(d) This Ordinance shall not be discharged until all Reserve Policy Costs owing to the Insurer shall have been paid in full. The City's obligation to pay such amount shall expressly survive payment in full of the Bonds.

(e) The Reserve Policy shall expire and terminate on the earlier of the date the Bonds are no longer outstanding and the final maturity of the Bonds.

(f) The Trustee shall ascertain the necessity for a claim under the Reserve Policy in accordance with the provisions of paragraph (a) above and provide notice to the Insurer at least five business days prior to each date upon which interest or principal is due on the Bonds.

(g) The City agrees unconditionally that it will pay or reimburse the Insurer on demand for any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Insurer may pay or incur in connection with the Reserve Policy, including, but not limited to, fees and expenses of the Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Ordinance and any other document executed in connection with the Bonds ("Reserve Policy Expenses"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Insurer spent in connection with the actions described in the preceding sentence. The City agrees that failure to pay any Reserve Policy Expenses on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Insurer until the date the Insurer is paid in full.

(h) Payments made by the Insurer under the Reserve Policy with respect to claims for interest on or principal of the Bonds shall not discharge the obligation of the City with respect to such Bonds, and the Insurer shall become the owner of such unpaid Bonds and claims for the interest thereon. The City, the Trustee and the owners of the Bonds recognize and agree that to the extent the Insurer makes payments directly or indirectly (e.g., by paying through the Trustee), on account of principal of or interest on the Bonds, the Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the City, with interest on Bond principal (but not Bond interest); provided, however, that the rights of the Insurer to receive principal and interest payments from the City obtained through subrogation in connection with the Reserve Policy shall be subordinate to only the right of the holders of the Bonds, the Parity Bonds and any additional parity bonds to receive principal and interest payments from the City. The foregoing subordination shall be limited to principal and interest payments on the Bonds under the Reserve Policy and shall in no way limit the Insurer's other rights as an owner of a Bond or the rights granted to the Insurer under other documents executed in connection with the Bonds. The Insurer shall only be entitled to receive payments through subrogation in connection with the Reserve Policy to the extent not otherwise reimbursed by the City under the Reserve Agreement.

(i) In order to secure the City's payment obligations with respect to the Reserve Policy Costs, there is hereby granted and perfected in favor of the Insurer a security interest (subordinate only to that of the owners of the Bonds, the Parity Bonds and any additional parity bonds issued under Section 14 hereof) in all System revenues and other collateral pledged as security for the Bonds (excluding from such collateral any debt service reserves for the Parity Bonds and any additional parity bonds and excluding any collateral specific to each issue of Parity Bonds and additional parity bonds). Reserve Policy Costs shall be paid to the Insurer immediately following the payment of principal of and interest on the Bonds, the Parity Bonds and any additional parity bonds, including following the occurrence of a default or event of default.

(j) Any amendment, supplement, modification to, or waiver of this Ordinance or any other document executed in connection with the Bonds that requires the consent of the owners of the Bonds or adversely affects the rights or interest of the Insurer shall be subject to the prior written consent of the Insurer.

(k) The City shall provide the Insurer with the following notices and other information: (i) notice of any draw upon the Debt Service Reserve Account within two (2) business days after knowledge thereof, other than in connection with withdrawals of amounts in excess of the Required Level; (ii) prior written notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof; (iii) all notices and other information it is obligated to provide under the Disclosure Agreement and to the holders of the Bonds or the Trustee under this Ordinance or any other document executed in connection with the Bonds; and (iv) such other information as the Insurer may reasonably request.

(l) Notices and other information provided to the Insurer in connection with the Reserve Policy shall be sent to the following address (or such other address as the Reserve Insurer may designate in writing): Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, NY 10281, Attention: Surveillance, with the Policy No. included, Telephone: (212) 235-2500, Telecopier: (212) 235-1542, Email: notices@buildamerica.com.

(m) Notwithstanding anything to the contrary, the provisions of this Section 26 (including the rights of the Insurer and the obligations of the City) shall continue in full force and effect for so long as any Bonds are outstanding or any amounts are owed to the Insurer

Section 27. (a) The notice address of the Insurer for notices provided in connection with the Insurance Policy is: Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, New York 10281, Attention: Surveillance, Telephone: (212) 235-2500, Telecopier: (212) 235-1542, Email: notices@buildamerica.com. In each case in which notice or other communication refers to an event of default or a claim on the Insurance Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at claims@buildamerica.com or at Telecopier: (212) 235-5214 and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(b) In the event that principal and/or interest due on the Insured Bonds shall be paid by the Insurer pursuant to the Insurance Policy, the Insured Bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, the assignment and pledge granted hereby and all covenants, agreements and other obligations of the City to the registered owners shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of such registered owners.

In the event that on the second (2nd) business day prior to any payment date on the Insured Bonds, the Trustee has not received sufficient moneys to pay all principal of and interest on the Insured Bonds due on such payment date, the Trustee shall immediately notify the Insurer or its designee on the same business day by telephone or electronic mail, of the amount of the

deficiency. If any deficiency is made up in whole or in part prior to or on the payment date, the Trustee shall so notify the Insurer or its designee.

In addition, if the Trustee has notice that any holder of the Insured Bonds has been required to disgorge payments of principal of or interest on the Insured Bonds pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy law, then the Trustee shall notify the Insurer or its designee of such fact by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of the Insurer.

The Trustee shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for holders of the Insured Bonds as follows:

(i) If there is a deficiency in amounts required to pay interest and/or principal on the Insured Bonds, the Trustee shall (1) execute and deliver to the Insurer, in form satisfactory to the Insurer, an instrument appointing the Insurer as agent and attorney-in-fact for such holders of the Insured Bonds in any legal proceeding related to the payment and assignment to the Insurer of the claims for interest on the Insured Bonds, (2) receive as designee of the respective holders (and not as paying agent) in accordance with the tenor of the Insurance Policy payment from the Insurer with respect to the claims for interest so assigned, (3) segregate all such payments in a separate account (the "BAM Policy Account") to only be used to make scheduled payments of principal of and interest on the Insured Bonds, and (4) disburse the same to such respective holders; and

(ii) If there is a deficiency in amounts required to pay principal of the Insured Bonds, the Trustee shall (1) execute and deliver to the Insurer, in form satisfactory to the Insurer, an instrument appointing the Insurer as agent and attorney-in-fact for such holder of the Insured Bonds in any legal proceeding related to the payment of such principal and an assignment to the Insurer of the Insured Bonds surrendered to the Insurer, (2) receive as designee of the respective holders (and not as paying agent) in accordance with the tenor of the Insurance Policy payment therefore from the Insurer, (3) segregate all such payments in the BAM Policy Account to only be used to make scheduled payments of principal of and interest on the Insured Bonds and (4) disburse the same to such holders.

The Trustee shall designate any portion of payment of principal on Insured Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Bonds registered to the then current holder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name directed by the Insurer, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the City on any Insured Bond or the subrogation or assignment rights of the Insurer.

Payments with respect to claims for interest on and principal of Insured Bonds disbursed by the Trustee from proceeds of the Insurance Policy shall not be considered to discharge the obligation of the City with respect to such Insured Bonds, and the Insurer shall become the owner of such unpaid Insured Bonds and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraphs or otherwise. This Ordinance shall not be discharged or terminated unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.

Irrespective of whether any such assignment is executed and delivered, the City and the Trustee agree for the benefit of the Insurer that:

(i) To the extent the Insurer makes payments directly or indirectly (e.g., by paying through the Trustee), on account of principal of or interest on the Insured Bonds, the Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the City with interest on Insured Bond principal (but not Insured Bond interest), as provided and solely from the sources stated in this Ordinance and the Insured Bonds; and

(ii) The Insurer will be paid the amount of such principal and interest, with interest on Insured Bond principal (but not Insured Bond interest), as provided herein and in the Insured Bonds, but only from the sources and in the manner provided herein and therein for the payment of principal of and interest on the Insured Bonds to holders, and the Insurer will be treated as the owner of such rights to the amount of such principal and interest.

(c) The City agrees unconditionally that it will pay or reimburse the Insurer on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Insurer may pay or incur in connection with the Insurance Policy, including, but not limited to, fees and expenses of the Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Ordinance ("Administrative Costs"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Insurer spent in connection with the actions described in the preceding sentence. The City agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to the Insurer until the date the Insurer is paid in full.

Notwithstanding anything herein to the contrary, the City agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy; and (ii) interest on Insured Bond principal (but not Insured Bond interest) from the date paid by the Insurer until payment thereof in full by the City, payable to the Insurer at the stated interest rate for each such Insured Bond (collectively, the "Bond Insurer Reimbursement Amounts") compounded semi-annually. The City hereby covenants and agrees that the Bond Insurer

Reimbursement Amounts are payable from and secured by a lien on and pledge of the System revenues on a parity with debt service due on the Bonds.

(d) The rights granted to the Insurer under this Ordinance to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the holders of the Insured Bonds and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the holders of the Insured Bonds or any other person is required in addition to the consent of the Insurer.

(e) The Insurer shall be entitled to pay principal or interest on the Insured Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Insurance Policy) in accordance with this Ordinance, whether or not the Insurer has received a claim upon the Insurance Policy.

(f) Any amendment, supplement, modification to, or waiver of, this Ordinance that requires the consent of holders of the Insured Bonds or adversely affects the rights or interests of the Insurer shall be subject to the prior written consent of the Insurer. The Trustee and each owner of the Insured Bonds hereby appoint the Insurer as their agent and attorney-in-fact with respect to the Insured Bonds and agree that the Insurer may at any time during the continuation of any proceeding by or against the City under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including without limitation, (i) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a "Claim"), (ii) the direction of any appeal of any order relating to any Claim, (iii) the posting of any surety, supersedeas or performance bond pending any such appeal, and (iv) the right to vote to accept or reject any plan of adjustment. In addition, the Trustee and each owner of the Insured Bonds delegate and assign to the Insurer, to the fullest extent permitted by law, the rights of the Trustee and each owner of the Insured Bonds with respect to the Insured Bonds in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any Insolvency Proceeding.

(g) Any reorganization or liquidation plan with respect to the City must be acceptable to the Insurer. In the event of any reorganization or liquidation of the City, the Insurer shall have the right to vote on behalf of all holders of the Insured Bonds absent a continuing failure by the Insurer to make a payment under the Insurance Policy.

(h) Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of a default, the Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the holders of the Insured Bonds or the Trustee for the benefit of the holders of the Insured Bonds under this Ordinance. No default may be waived without the Insurer's written consent.

(i) If an Insurer Default (as defined below) shall occur and be continuing, then, notwithstanding anything herein to the contrary, (1) if at any time prior to or following an Insurer Default, the Insurer has made payment under the Insurance Policy, to the extent of such payment the Insurer shall be treated like any other holder of the Bonds for all purposes, including giving of consents, and (2) if the Insurer has not made any payment under the Insurance Policy, the Insurer shall have no further consent rights until the particular Insurer Default is no longer continuing or the Insurer makes a payment under the Insurance Policy, in which event, the foregoing clause (1) shall control. For purposes of this paragraph, "Insurer Default" means: (A) the Insurer has failed to make any payment under the Insurance Policy when due and owing in accordance with its terms; or (B) the Insurer shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take action for the purpose of effecting any of the foregoing; or (C) any state or federal agency or instrumentality shall order the suspension of payments on the Insurance Policy or shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of the Insurer (including without limitation under the New York Insurance Law).

(j) The Insurer, as issuer of the Insurance Policy and the Reserve Policy, is recognized as and shall be deemed to be a third party beneficiary of this Ordinance and may enforce the provisions of this Ordinance.

(k) No grace period shall be permitted for payment defaults on the Insured Bonds. No grace period for a covenant default shall exceed 30 days without the prior written consent of the Insurer.

Section 28. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City represents and covenants that the proceeds of the Bonds and System revenues will not be used directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) The City shall assure that (i) not in excess of 10% of the Net Proceeds of the Bonds is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used

for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for a Private Business Use, the excess over such 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements and the improvements refinanced by the Bonds Refunded.

The City shall assure that not in excess of 5% of the Net Proceeds of the Bonds are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this subsection (b), the following terms shall have the following meanings:

“Net Proceeds” means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, less any amount deposited into the Debt Service Reserve Account which is derived from the sale proceeds of the Bonds.

“Private Business Use” means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

(c) The City covenants that it will take no action which would cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code. Nothing in this Section shall prohibit investments in bonds issued by the United States Treasury.

(d) The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, the statement required by Section 149(e) of the Code.

(e) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Water and Sewer Fund that remain after all required deposits have been made into the Operation and Maintenance Fund and the Bond Fund, to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Nonpurpose Investments (as therein defined) attributable to the Bonds, other than investments attributable to such excess over (B) the amount which would have been earned if such Nonpurpose Investments attributable to the Bonds were invested at a rate equal to the Yield (as defined in the Code) on the Bonds, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant

to advise the City in making the determination required to comply with this subsection (e). Anything herein to the contrary notwithstanding, this provision may be modified or rescinded if in the opinion of Bond Counsel such modification or rescission will not affect the tax-exempt status of the Bonds for federal income tax purposes. As used herein, the term “Bond Counsel” means any lawyer or firm of lawyers of national reputation with respect to the exemption from income tax for interest on state and local debt obligations.

(f) The City covenants that it will not reimburse itself from proceeds of the Bonds for costs paid prior to the date the Bonds are issued except in compliance with United States Treasury Regulation No. 1.150-2 (the “Regulation”). This Ordinance shall constitute an “official intent” for the purpose of the Regulation.

Section 29. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Trustee, the Insurer and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee, the Insurer and the registered owners of the Bonds.

Section 30. The Reserve Agreement, in substantially the form submitted to this meeting is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute and deliver the Reserve Agreement on behalf of the City, and the Mayor and other officers of the City are authorized to execute and deliver such undertakings as may be appropriate to the securing of the Reserve Policy.

Section 31. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement on behalf of the City. The Mayor and City Administrator are each authorized and directed to take all action required on the part of the City to fulfill the City’s obligations under the Disclosure Agreement.

Section 32. The Mayor, and other officers of the City in accordance with their offices, are authorized to execute such writings and take such action as may be appropriate to cause the Bonds to be issued.

Section 33. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of the Ordinance.

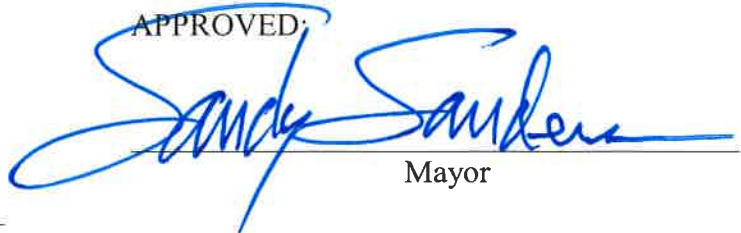
Section 34. All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 35. It is hereby ascertained and declared that the Improvements are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The Improvements cannot be accomplished without the issuance of the

Bonds, which cannot be sold at the interest rates specified herein unless this Ordinance is immediately effective. Therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.


PASSED: July 24, 2018.

APPROVED:



Mayor

ATTEST:



City Clerk



CERTIFICATE

The undersigned, City Clerk of the City of Fort Smith, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 57-18, adopted at a regular session of the Board of Directors of the City, held at the regular meeting place of the Board of Directors in the City at 6:00 p.m., on the 24th day of July, 2018, and that said Ordinance is of record in Ordinance Record Book No. , Page , now in my possession.

GIVEN under my hand and seal this 24th day of July, 2018,

Sherril Gard

City Clerk

