

ORDINANCE NO. 63

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF WATER REVENUE BONDS, INCREASING THE WATER RATES IN ORDER TO PROVIDE THE REVENUES TO PAY SAID BONDS, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Clinton, Arkansas, owns and operates a municipal waterworks system on which it has an indebtedness represented by three water revenue bond issues, as follows: (1) First lien issue of \$38,600 dated March 1, 1953, with a balance of \$31,100 outstanding, due on September 1 of the years 1959 to 1973, inclusive; (2) a \$10,000 issue on a parity as to interest payments with the first lien bonds, but second lien as to principal, all due on September 1, 1974; and (3) \$6,000 issue dated September 1, 1953, on a parity with the first lien bonds, with a balance of \$3,500 outstanding, due on September 1 of the years 1959 to 1965, inclusive, but the City needs to expand the system in order to meet the needs of its citizens, and especially of a new poultry processing plant, and it is to the advantage of the City and its inhabitants to do this in order to provide additional employment; and

WHEREAS, the processing plant agrees to pay, in addition to the meter charges for the water it uses, a flat \$125 per month charge, and the City be raising the minimum charge per connection by \$1.00 per month can secure enough additional revenues to pay the estimated cost of the improvements over a period of from one to seventeen years, and the City has had plans made by L. M. McGoodwin, a consulting engineer, of Fayetteville, Arkansas, which plans are on file in the office of the City Recorder and show an estimated cost of \$35,000; and

WHEREAS, E. L. Villareal & Company, investment bankers, Little Rock, Arkansas, have agreed to buy a bond issue of \$35,000 before conversion, bearing interest at the rate of 5.15 per centum per annum payable semi-annually, and maturing as hereinafter set out, provided that the City will pledge for their payment in water revenues, subject to the lien of the hereinabove described bonds,

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but setting apart for the new issue all of the revenue derived from the increase of \$1.00 per month in the minimum charge, and the additional \$125 per month to be paid by the processing plant; and the additional revenue derived from these two sources will be sufficient to give a coverage of approximately 140 per cent of the average annual requirements for the payment of the new bonds; and

WHEREAS, the said E.L. Villareal & Company have agreed to pay par and accrued interest for these bonds and in addition to pay the expenses of printing the bonds and the fees of the trustee and paying agent and the bond approving attorneys upon certain conditions, one of which is that they may have the right to convert the bonds to bonds bearing interest at a lower rate per annum, and they have presented computations showing that the cost of maturing \$35,000 in bonds gearing interest at the rate of 5.15 per cent per annum, dated February 1, 1959, and maturing on August 1 of each year as follows:

|        |                            |
|--------|----------------------------|
| \$1250 | in 1960 to 1963, inclusive |
| 1500   | in 1964 to 1967, inclusive |
| 2000   | in 1968 and 1969           |
| 2500   | in 1970 to 1973, inclusive |
| 3000   | in 1974                    |
| 3500   | in 1975 and 1976           |

is \$55,213.74, and they have converted these bonds to \$39,500 in bonds dated February 1, 1959, bearing interest at the rates of 3½ per cent and 4 per cent per annum, maturing over the same period of time as hereinabove set out, at a total cost of principal and interest of \$55,130. so that the City will receive the same amount for its bonds but will pay \$83.74 less for retiring them; now, therefore,

BE IT ORDAINED by the City Council of the City of Clinton, Arkansas:

SECTION 1. The City Council finds that it is necessary to make the improvements to its municipal waterworks system in order to provide adequate water for the domestic, commercial and manufacturing needs of the City, and therefore the Council does determine to make the improvements which briefly described, are as follows: Construction of a new primary treatment unit for the water treatment plant designed for a capacity of 400 gallons per minute, a new filter designed for 200 gallons per minute, a 50,000 gallon clear treated water storage tank, a low lift pump to pump water from the river and a high service pump at 400 gallons per minute to deliver water

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to the system, and the installation of approximately 600 feet of 6-inch pipe to deliver water to the new poultry processing plant and approximately 1500 feet of 8-inch pipe to make a connection in the distribution system so that the water can be delivered.

SECTION 2. The City Council finds that the sale of the \$35,000 in bonds bearing interest at the rate of 5.15 per cent per annum to E.L. Villarreal & Company is a fair sale at a price that is allowed by law, and that the conversion of these bonds to \$39,500 bearing interest and maturing as hereinafter set out, gives to the City for its bonds the full amount that it would receive if there were no conversion and it does not require the City to pay any more on account of conversion; therefore, the sale of the bonds and the conversion are both approved.

SECTION 3. That under the authority of the general statutes of the State of Arkansas, and particularly Act No. 131 of the General Assembly of the State of Arkansas for the year of 1933, as amended (sometimes hereinafter called "Act No. 131, as amended,"), revenue bonds be issued in the total amount of \$39,500, the proceeds of the sale of which shall be used to pay the cost of the new improvements, construction, and for six months after the completion thereof, and other necessary expenses; that said bonds be designated "City of Clinton, Arkansas, \_\_\_per cent Water Revenue Bonds of 1959," be dated as of February 1, 1959, numbered from 1 to 41, both inclusive, be sometimes hereinafter referred to as "bonds of 1959," be in the denomination of \$1000 each except Nos. 23, 26, and 29, which shall be in the denomination of \$500 each, be callable as hereinafter set out, and mature in numerical order on August 1 of each year as follows:

| <u>YEAR</u> | <u>BOND NOS.</u> | <u>AMOUNT</u> |
|-------------|------------------|---------------|
| 1960        | 1 and 2          | \$2000        |
| 1961        | 3 and 4          | 2000          |
| 1962        | 5 and 6          | 2000          |
| 1963        | 6 and 7          | 2000          |
| 1964        | 8 and 9          | 2000          |
| 1965        | 10 and 11        | 2000          |
| 1966        | 12 and 13        | 2000          |
| 1967        | 14 and 15        | 2000          |
| 1968        | 16 and 17        | 2000          |
| 1969        | 19 and 20        | 2000          |

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| <u>YEAR</u> | <u>BOND NOS.</u> | <u>AMOUNT</u> |
|-------------|------------------|---------------|
| 1970        | 21,22, and 23    | \$2500        |
| 1971        | 24,25, and 26    | 2500          |
| 1972        | 27,28, and 29    | 2500          |
| 1973        | 30,31, and 32    | 3000          |
| 1974        | 33,34, and 35    | 3000          |
| 1975        | 36,37, and 38    | 3000          |
| 1976        | 39,40, and 41    | 3000          |

The bonds shall bear interest payable semi-annually beginning August 1, 1959, at the following rates per annum: Nos. 1 to 20, inclusive, at 3 $\frac{1}{2}$ %, and Nos. 21 to 41, inclusive, at 4%. The bonds shall be signed by the Mayor and City Recorder and sealed with the corporate seal of the City; the interest upon the bonds shall be evidenced by coupons attached, thereto, the coupons to be signed by said Mayor by his facsimile signature, and the Mayor shall be the execution of the bonds adopt as and for his own proper signature his facsimile signature appearing on said coupons. Both principal and interest of the bonds shall be payable in any coin or currency which on the dates of payment thereof is legal tender for the payment of debts due the United States of America, at the office of The First National Bank in Little Rock, Arkansas.

The bonds together with interest, thereon, shall be payable solely out of the Water Revenue Bond Fund of 1959 as hereinafter described, and shall be a valid claim of the holder thereof only against such Fund, and the amount of the revenues pledged to said Fund, which amount of said revenues is hereby pledged and mortgaged for the equal and ratable payment of the interest on and principal of the bonds of 1959, and shall be used for no other purpose, except as hereinafter set out.

SECTION 4. Said bonds of 1959 and coupons shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF VAN BUREN  
CITY OF CLINTON

Per Cent Water Revenue Bond of 1959

No. \_\_\_\_\_ Amount\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Clinton, in the County of Van Buren, State of Arkansas, for value received hereby promises to pay, solely from the special fund provided therefore as hereinafter set forth, to  
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bearer, the sum of \_\_\_\_\_ DOLLARS on the first day of August, 19\_\_\_\_, with interest thereon at the rate of \_\_\_\_\_ per centum (\_\_\_\_%) per annum from date until paid, payable on August 1, 1959, and semi-annually thereafter on the first days of February and August, upon presentation and surrender of the annexed coupons as they severally become due. Both principal hereof and interest hereon shall be payable in any coin or currency which on the dates of payment thereof is legal tender for the payment of debts due the United States of America, at the office of The First National Bank in Little Rock, Little Rock, Arkansas.

This bond is one of a series of bonds aggregating Thirty-Nine Thousand Five Hundred Dollars (\$39,500), all of like tenor and effect except as to number, denomination, interest rate, and maturity, numbered from 1 to 41, both inclusive, and issued for the purpose of improving and enlarging the municipal waterworks system for said City. (The waterworks system will be hereinafter called the "System.")

This bond and the series of which it forms a part are issued pursuant to and in accordance with the provisions of the Laws and Constitution of the State of Arkansas, and particularly Act No. 131 of the Acts of the General Assembly of the State of Arkansas for the year 1933, as amended, and do not constitute an indebtedness of the City of Clinton within any constitutional or statutory limitation. Said bonds are payable solely from a fixed amount of the revenues from the System, which amount shall be sufficient to pay the principal of and interest on the bonds as the same become due and payable. Said amount has been duly set aside and pledged as a special fund for that purpose and identified as the "Water Revenue Bond Fund of 1959," created by Ordinance No. 63 of the City of Clinton, Arkansas, passed and approved on the 21st day of January, 1959, being the ordinance by which this bond is authorized to be issued, and recorded in the office of the Circuit Clerk and ex officio Recorder of Van Buren County, Arkansas, and reference is made thereto for a detailed description of said Water Revenue Bond Fund of 1959. The said City of Clinton has fixed and has covenanted

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and agreed to maintain rates for water services which shall be sufficient at all times to provide for the payment of the reasonable expenses of operation, repair and maintenance of said System, and to provide for the payment of the principal of and interest on the bonds of this issue and the other water revenue bonds issued by the City and now outstanding, as the same become due and payable.

This bond is expressly made negotiable by the statutes under which it is issued, and issued with the intent that the laws of the State of Arkansas shall govern the construction thereof.

After a reserve fund of \$3000 has been established, the City pledges itself to use the available surplus from the revenues pledged for the payment of the bonds of this issue to call said bonds for payment prior to maturity, and on and after August 1, 1964, the City may call bonds for payment prior to maturity with funds from any source, but all calls shall be made in inverse numerical order at par and accrued interest, and only on an interest paying date. In the event a call is made, the City shall publish notices for such call for redemption once a week for two weeks in some newspaper of general circulation throughout the State of Arkansas and published in the City of Little Rock, Arkansas, giving the number and maturity of each bond being called, the first publication to be at least fifteen days prior to the date fixed for redemption, and after the date fixed for redemption each bond so called will cease to bear interest, provided funds for its payment are on deposit with the paying agent at that time.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, things and acts required to exist, to happen and to be performed precedent to and in the issuance of this bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that sufficient of the income and revenue which is deemed to be derived from the operation of said System has been pledged to and will be set aside into said special fund for the payment of the principal of and interest on said bonds; and these bonds do not exceed any statutory or constitutional limitation.

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This bond shall not be valid until it shall have been authenticated by the certificate hereon, duly signed by the The First National Bank in Little Rock, Little Rock, Arkansas.

IN WITNESS WHEREOF, the City of Clinton, Arkansas, by its City Council, has caused this bond to be signed by the Mayor and City Recorder thereof and sealed with the corporate seal of said City, and has caused the coupons hereto attached to be executed by the facsimile signature of said Mayor, all as of the first day of February, 1959.

CITY OF CLINTON, ARKANSAS      By: FLOY BERKOWITZ, Mayor.

(Seal)

Attest: G. M. AYERS, City Recorder.

(Form of Coupon)

No. \_\_\_\_\_ \$ \_\_\_\_\_

On the first day of February (August), 19\_\_, unless the bond to which this coupon is attached is sooner called payment, the City of Clinton, Arkansas, promises to pay to bearer the sum of \_\_\_\_\_ DOLLARS in any coin or currency which on said date is legal tender for the payment of debts due the United States of America, solely out of the fund specified in the bond to which this coupon appertains, at the office of The First National Bank in Little Rock, Little Rock, Arkansas, being interest then due on its Water Revenue Bond of 1959 dated February 1, 1959, and numbered \_\_\_\_\_.

CITY OF CLINTON, ARKANSAS      By: \_\_\_\_\_ MAYOR

(All coupons shall be for six months' interest. The Mayor's signature shall be lithographed.)

On the back of said bonds is to appear the following:

CERTIFICATE

This bond is one of the 41 Water Revenue Bonds of 1959 aggregating \$39,500 described within.

THE FIRST NATIONAL BANK IN LITTLE ROCK, LITTLE ROCK, ARKANSAS, Trustee.

By \_\_\_\_\_, Trust Officer, Little Rock, Ark.

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SECTION 5. In order to pay the Water Revenue Bonds of 1959 and the interest thereon as they mature, the following monthly rates for water service are hereby established and set up:

MORE \_\_\_\_\_ MORE \_\_\_\_\_

MONTHLY WATER RATES

|  |                         |
|--|-------------------------|
| For domestic users: First 3,000 gallons or less .....          | \$3.50                  |
| For commercial users: First 3,000 gallons or less .....        | 4.50                    |
| For all users: Next 3,000 gallons.....                         | \$.40 per 1,000 gallons |
| Next 4,000 gallons.....  | \$.30 per 1,000 gallons |
| Next 15,000 gallons.....                                       | \$.25 per 1,000 gallons |
| Over 25,000 gallons.....                                       | \$.15 per 1,000 gallons |
| Minimum charge for domestic users.....                         | \$3.50                  |
| Minimum charge for commercial users.....                       | 4.50                    |
| Fire Hydrants.....   | 75.00                   |
| per year per hydrant, payable at the rate of \$18.75 quarterly |                         |

In addition to the charge for water as shown by its water meter, the Clinton Poultry and Egg plant shall pay \$125 per month because of the additional cost to supply it in the quantity it requires.

SECTION 6. The additional revenue derived from the increased minimum monthly charge and the special charge to the Clinton Poultry and Egg Plant shall be deposited in a separate fund to be designated "Water Revenue Bond Fund of 1959," and after a reserve of \$3000 has been accumulated in said Water Revenue Bond Fund of 1959, the surplus must be used to call bonds for prepayment, except that the City will neither be required nor permitted to call bonds for partial payment.

SECTION 7. In addition to the fund hereinabove created by Section 6. of this ordinance, the City agrees that in the event there are surplus water revenues as defined by Section 12. of Ordinance No. 53, of the City of Clinton, passed and approved March 23, 1953, and recorded in Record Book Vol. Misc. 13, pages 61 to 70, inclusive, in the office of the Circuit Clerk and ex officio Recorder of Van Buren County, Arkansas, and there is either a deficit or a deficit is about to occur in the Water Revenue Bond Fund of 1959, hereinabove created, it will transfer available funds from such surplus to the Water Revenue Bond Fund of 1959, subject to any priority that the presently outstanding water revenue bonds may have on such funds.

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SECTION 8. Nothing in this ordinance is intended to nor shall be construed to impair the obligations of the City to the holders of any of its presently outstanding water revenue bonds.

SECTION 9. There shall be a statutory mortgage lien upon that part of the waterworks system constructed from the proceeds of this water revenue bond issue, which shall exist in favor of the holders of the bonds of 1959 and each of them and to and in favor of the holders of the coupons attached to said bonds, and such improvements shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of said bonds; provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of Arkansas cited as *City of Harrison v. Braswell* 209 Ark. 1094, 194 SW (2d) 12, and that said statutory lien shall not be asserted or enforced so as to result in a foreclosure or sale of any of the properties constituting the municipal waterworks, but said statutory mortgage lien shall be recognized and enforced only for the purpose of preventing the sale, attempted mortgage, lease, or disposal in any other manner, of an integral part of said System.

SECTION 10. Nothing in this ordinance shall be construed to prevent the issuance by the City of additional bonds to finance or pay the cost of constructing any extensions, betterments or additions to the System; provided, however, that the City shall not authorize or issue any such additional bonds so long as any of these bonds are outstanding unless the gross revenues derived from the System for the fiscal year then next preceding shall have been sufficient to provide for all costs of operation, repair, maintenance and depreciation of the System and leave a balance equal to at least 150 per cent of the aggregate of (a) principal and interest payments for such year on all bonds then outstanding and the fiscal agency charges therefor; and (b) one year's interest on the total issue of such additional bonds then proposed to be issued; and (c) an amount of principal of such additional bonds for one year computed by dividing the total amount of such issue by the number of years to the final maturity date of such bonds. Provided, no bonds shall be issued

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having a lien on net revenues prior to the lien of the bond issue authorized by this ordinance, but nothing herein shall be construed to prevent the City from issuing bonds subject to the prior lien of the City's water revenue bonds then outstanding.

SECTION 11. The Mayor and City Recorder are hereby authorized and directed to execute the bonds and deliver them to the buyers upon payment of the full purchase price and accrued interest. The money received for accrued interest shall be paid into the Water Revenue Bond Fund of 1959. The balance of the money received for the bond issue shall be deposited in a fund hereby created and shall be designated "1959 Construction Fund," and shall be used solely for the purpose of paying the cost of the improvements according to the plans thereof which are now on file, together with the necessary engineering, legal, bond costs, and other expenses incidental to such construction, and except for legal, bond and engineering costs, shall be paid out only on engineer's estimates, and each depository shall be notified of this requirement. Provided, the City shall be and is hereby authorized to set aside in the Water Revenue Bond Fund of 1959 from the proceeds of the bond sale a sum sufficient to pay interest on the bonds during the period of construction of the improvements, as estimated by the engineer, and for six months thereafter, and the paying agent's fees. The 1959 Construction Fund may be deposited in one or more banks, each of which shall be required to give security for that part of the deposit, which exceeds the amount guaranteed by said Federal Deposit Insurance Corporation, said security to be either a surety bond executed by a corporation authorized to do business in Arkansas, or the escrow deposit of bonds issued by or fully guaranteed by the United States of America. In the event that any funds remain in the 1959 Construction Fund after completion of the improvements, such balance shall be immediately transferred to the Bond Fund of 1959.

SECTION 11 (a) It shall be the duty of the City Treasurer to deliver to the Trustee, not less than five days before the due date of any semi-annual payment of interest or annual payment of principal, a check or voucher drawn on the Water Revenue Bond Fund of 1959,

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to be used to meet the payment then due, together with the with the paying charges hereinafter set out. The amounts of the payments are as follows:

| YEAR | PRINCIPAL                |                       | INTEREST           |                      | TOTAL  |
|------|--------------------------|-----------------------|--------------------|----------------------|--------|
|      | August 1<br>of each year | Feb. 1<br>3½ per cent | Aug. 1<br>per cent | Feb. 1<br>4 per cent |        |
| 1959 | \$ 2000                  | \$ 350                | \$350              | \$ 390               | \$390  |
| 1960 | 2000                     | 315                   | 315                | 390                  | 390    |
| 1961 | 2000                     | 280                   | 280                | 390                  | 390    |
| 1962 | 2000                     | 245                   | 245                | 390                  | 390    |
| 1963 | 2000                     | 210                   | 210                | 390                  | 390    |
| 1964 | 2000                     | 175                   | 175                | 390                  | 390    |
| 1965 | 2000                     | 140                   | 140                | 390                  | 390    |
| 1966 | 2000                     | 105                   | 105                | 390                  | 390    |
| 1967 | 2000                     | 70                    | 70                 | 390                  | 390    |
| 1968 | 2000                     | 35                    | 35                 | 390                  | 390    |
| 1969 | 2500                     |                       |                    | 390                  | 390    |
| 1970 | 2500                     |                       |                    | 340                  | 340    |
| 1971 | 2500                     |                       |                    | 290                  | 290    |
| 1972 | 2500                     |                       |                    | 240                  | 240    |
| 1973 | 3000                     |                       |                    | 180                  | 180    |
| 1974 | 3000                     |                       |                    | 120                  | 120    |
| 1975 | 3000                     |                       |                    | 60                   | 60     |
| 1976 | 3000                     |                       |                    |                      |        |
|      |                          |                       |                    |                      | \$740  |
|      |                          |                       |                    |                      | \$3480 |
|      |                          |                       |                    |                      | 3410   |
|      |                          |                       |                    |                      | 3340   |
|      |                          |                       |                    |                      | 3270   |
|      |                          |                       |                    |                      | 3200   |
|      |                          |                       |                    |                      | 3130   |
|      |                          |                       |                    |                      | 3060   |
|      |                          |                       |                    |                      | 2990   |
|      |                          |                       |                    |                      | 2920   |
|      |                          |                       |                    |                      | 2850   |
|      |                          |                       |                    |                      | 3280   |
|      |                          |                       |                    |                      | 3180   |
|      |                          |                       |                    |                      | 3080   |
|      |                          |                       |                    |                      | 3480   |
|      |                          |                       |                    |                      | 3360   |
|      |                          |                       |                    |                      | 3240   |
|      |                          |                       |                    |                      | 3120   |

These amounts shall be proportionately reduced in the event any bonds are called for payment prior to maturity.

SECTION 12. The terms "City" and "Bond Fund" as used in this section shall mean, respectively, the incorporated Town or the City issuing the Bonds, and the Fund provided by this ordinance for the payment of the Bonds.

For and in consideration of the purchase and acceptance of the Bonds authorized by this ordinance and to facilitate their payment, with interest, the City agrees to the following terms:

(a) None of the facilities or services afforded by the System shall be furnished without a reasonable charge being made therefore. In the event that the City or any department, agency, or instrumentality thereof shall avail itself of the facility or services afforded by the System the reasonable value of the services and facilities so afforded shall be charged against the City or such department, agency, or instrumentality, and shall be paid for as charges therefor accrue. The revenues so received from the City shall be deemed to be revenues derived from the operation of the System; provided, however, that nothing herein shall be construed as requiring the City or any department, agency, or instrumentality

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thereof to avail itself of the facilities or services afforded by the System.

(b) The City will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost. So long as any of the Bonds are outstanding, the City agrees to maintain fire, lightning and tornado insurance on the System in an amount which normally would be carried by a private company engaged in a similar type of business. These insurance policies are to be taken with companies approved by the Trustee, are to carry a clause making them payable to the Trustee as its interest may appear, are to be kept continuously in force, and either the original policies of insurance shall be placed in the custody of the Trustee or the Trustee shall be furnished evidence, satisfactory to wit that policies have been issued and carry the loss payable to the Trustee clause. In the event of loss, the proceeds of such insurance are to be applied solely toward the reconstruction, replacement, or repair of the System. In such event the City will, with reasonable promptness, cause to <sup>be</sup> commenced and completed the reconstruction, replacement and repairs. Nothing herein shall be construed as requiring the City to expend any funds for premiums on its insurance on the System which are derived from sources other than the operation of the System.

(c) The City Treasurer shall be the custodian of the revenue derived from the System, and shall give bond as such custodian. Such bond shall be in an amount not less than \$ \_\_\_\_\_ and shall be approved by the Trustee.

(d) The System shall be operated upon a fiscal year basis, beginning \_\_\_\_\_ of each year and ending and including the following \_\_\_\_\_.

(e) So long as any of the Bonds are outstanding, the City will not mortgage, pledge, or otherwise encumber the system or any part thereof or any revenues therefrom, except as herein provided, and will not sell, lease, or otherwise dispose of any substantial portion of the same. The obligations of the City set out in this ordinance, the pledge of revenues, and the City's agreement not to

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