

ORDINANCE NO. 467

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

WHEREAS, the City of Barling, Arkansas (the "City") owns and operates a water and sewer system, which is operated as a single, integrated municipal undertaking (the "System"); and

WHEREAS, the City has previously issued its Water and Sewer Refunding Revenue Bonds, Series 2011 (the "Bonds Refunded"); and

WHEREAS, the Board of Directors of the City has determined that the City can achieve debt service savings by refunding the Bonds Refunded; and

WHEREAS, the City can accomplish the refunding of the Bonds Refunded (the "Refunding") by the issuance of its Water and Sewer Refunding Revenue Bond in the principal amount of \$3,130,000 (the "bond"); and

WHEREAS, the City has received an offer for the purchase of the bond from Regions Equipment Finance Corporation (the "Lender"), at a price of par (the "Purchase Price"), pursuant to a Letter of Offer and Representations (the "Offer"), which has been presented to and is before this meeting;

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

Section 1. The Refunding shall be accomplished. The Mayor and City Clerk are hereby authorized to take, or cause to be taken, all action necessary to accomplish the Refunding and to execute all required documents. The Bonds Refunded shall be called for redemption on the date the bond is issued at a price of par plus accrued interest.

Section 2. The Board of Directors hereby finds and declares that the period of usefulness of the System will be more than 15 years, which is longer than the term of the bond.

Section 3. The Offer of the Lender for the purchase of the bond from the City at the Purchase Price, for a bond bearing interest at the rate per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail is hereby accepted, and the bond is hereby sold to the Lender. The Mayor is hereby authorized and directed to execute and deliver the Offer on behalf of the City.

Section 4. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), 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, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), a City of Barling, Arkansas Water and Sewer Refunding Revenue Bond is hereby authorized and ordered issued in the principal amount of \$3,130,000 for the purpose of financing all or a portion of the costs of accomplishing the Refunding and paying expenses of issuing the bond. The bond shall mature on December 1, 2031 and shall bear interest at the rate of 1.90% per annum.

In the event of a Determination of Taxability (as defined below), the interest rate on the bond shall automatically increase to the Taxable Rate (as defined below) retroactive to the date of issuance of the bond and the City shall pay such additional amount as will result in the Lender receiving the interest component of the bond payments at the Taxable Rate.

"Determination of Taxability" shall mean, and shall occur when, (i) the Lender receives written notice from the City, supported by a written opinion of legal counsel duly admitted to practice law before the highest court of any state who may be counsel for the City, that interest on the bond is Taxable (as defined below) due to any action by the City or (ii) the Internal Revenue Service shall issue a final determination in writing that interest on the bond is Taxable due to any action by the City; *provided*, that a Determination of Taxability shall not be deemed to have occurred until and unless the City is afforded reasonable opportunity (at the expense of the City and for a period not to exceed 2 years) to pursue any judicial or administrative remedy available to it with respect to such determination and avails itself of such opportunity by appropriate proceedings diligently pursued.

"Taxable" shall mean that interest on the bond is includable in the gross income in the computation of federal income tax liability for the holder of the bond; provided, however, interest on the bond shall not be deemed "Taxable" because interest is includable in any calculation of income for purposes of an alternative minimum tax or any other type of taxation other than the regular federal tax imposed on income.

"Taxable Rate" means a fixed rate of interest equal to 2.50% on the outstanding principal balance on the bond.

The bond shall be dated the date of issuance and delivery to the Lender and shall be issuable only as one fully registered typewritten bond without coupons and numbered R-1.

Interest on the bond shall be payable on December 1, 2020, and semiannually thereafter on June 1 and December 1 of each year. Payment of each installment of principal and interest shall be made to the person in whose name the bond is registered on the registration books of the City maintained by Regions Bank, Little Rock, Arkansas, as Trustee and Paying Agent (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 the bond subsequent to such Record Date and prior to such interest payment date.

The 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.

A Certificate of Authentication substantially in the form set forth in Section 8 hereof (the "Certificate") duly executed by the Trustee shall be endorsed on the bond. The bond shall not be valid and obligatory for any purpose nor shall it be entitled to any right or benefit under this Ordinance unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate upon the bond shall be conclusive evidence that the bond has been authenticated and delivered under this Ordinance. The Certificate on the bond shall be deemed to have been executed if signed by an authorized officer of the Trustee.

In case the 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 in exchange and substitution for and upon cancellation of the mutilated bond, or in lieu of and in substitution for the 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 the 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 cause books to be maintained for the registration and for the transfer of the bond as provided herein and in the bond. The Trustee shall act as the bond registrar. The bond is transferable by the owner thereof or by his attorney duly authorized in writing, in whole or in part, to any person or entity in the owner's sole and absolute discretion at the principal office of the Trustee. Upon such transfer a new fully registered bond will be issued to the transferee in exchange therefor. The City may not assign its rights under this Ordinance or under the bond to any person without the prior written consent of the holder.

No charge shall be made to the owner of the bond for the privilege of transfer or exchange, but the owner of the 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 person in whose name the 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 the 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 bond or the date fixed for redemption of the bond 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 5. The bond shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City. The bond, together with interest thereon, is secured by and is payable solely from revenues derived from the System ("Revenues") and is also secured by the statutory mortgage lien upon the water facilities that are part of the System as more particularly described in Section 22. Revenues are hereby pledged and mortgaged for the equal and ratable payment of the bond. The bond shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. The bond and the Certificate 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. R-1	\$3,130,000

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF SEBASTIAN  
CITY OF BARLING  
WATER AND SEWER REFUNDING  
REVENUE BOND

Interest Rate: 1.90%	Maturity Date: December 1, 2031
Dated Date: June 2, 2020	
Registered Owner: Regions Equipment Finance Corporation	
Principal Amount: Three Million One Hundred Thirty Thousand Dollars	

KNOW ALL MEN BY THESE PRESENTS:

That the City of Barling, County of Sebastian, State of 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 Regions Bank, Little Rock, Arkansas, or its successor or successors, as Trustee and Paying Agent (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 from the interest commencement date specified below at the Interest Rate per annum shown above, payable December 1, 2020 and semiannually thereafter on the first days of June and December of each year, until payment of such Principal Amount 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.

This 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 the Dated Date shown above, 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 hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

Upon the occurrence of a Payment Default (as defined in Section 20 of the Authorizing Ordinance (defined below)), this bond shall bear interest as set forth above at the Default Rate. "Default Rate" means the Interest Rate plus 6% per annum.

Upon the occurrence of a Determination of Taxability (as defined in Section 4 of the Authorizing Ordinance), this bond shall bear interest as set forth above at the rate of 4% (the "Taxable Rate"). In addition, the City shall make, immediately upon demand of the holder of this bond, a payment to such holder sufficient to supplement prior payments of interest on this bond to the Taxable Rate.

This bond is issued for the purpose of refunding the City's Water and Sewer Refunding Revenue Bonds, Series 2011 and paying necessary expenses incidental thereto and to the authorization and issuance of this bond and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 234, Subchapter 2, Title 14, Chapter 164, Subchapter 4, and Title 14, Chapter 235,

Subchapter 2 of the Arkansas Code of 1987 Annotated and applicable decisions of the Supreme Court of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), and pursuant to Ordinance No. 467, duly adopted on April 28, 2020 (the "Authorizing Ordinance"). This bond does not constitute an indebtedness of the City within any constitutional or statutory limitation. This bond is not a general obligation of the City, but is a special obligation payable solely from the revenues derived from the operation of the City's water and sewer (combined) system (the "System"). An amount of System revenues sufficient to pay the principal of and interest on the bond has been duly pledged and set aside into the 2020 Water and Sewer Revenue Bond Fund created by the Authorizing Ordinance. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which this bond is issued, of the nature and extent of the security for this bond, and the rights and obligations of the City, the Trustee and the Registered Owner. The City has fixed and has covenanted and agreed to maintain rates for the services of the System which shall be sufficient at all times to provide for the proper and reasonable expenses of operation and maintenance of the System and for the payment of the principal of and interest on this bond, including Trustee's fees, as the same become due and payable, to establish and maintain any required debt service reserves and to make the required deposit for the depreciation of the System.

This bond shall be subject to optional and mandatory sinking fund redemption as follows:

1. This bond is subject to redemption at the option of the City, in whole or in part at any time, at a price equal to the greater of: (i) 100% of the remaining principal amount of the bond or (ii) the sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of the bond, not including any portion of those payments of interest accrued and unpaid as of the date on which the bond is to be redeemed, discounted to the date on which the bond is to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate (as hereinafter defined) plus 100 basis points, plus, in each case, accrued and unpaid interest on the bond on the redemption date. The "Treasury Rate" is, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 that has become publicly available at least two (2) business days prior to the redemption date (excluding inflation indexed securities) (or, if Federal Reserve Statistical Release H.15 is no longer published, any publicly available source of similar market data)) most nearly equal to the weighted average remaining life of the principal installments to be redeemed as of the redemption date.

2. This bond is subject to mandatory sinking fund redemption on December 1 in each of 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:

<u>Year</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>
2020	\$115,000
2021	250,000
2022	250,000
2023	255,000
2024	265,000
2025	270,000
2026	275,000
2027	280,000
2028	285,000
2029	290,000
2030	295,000
2031	300,000

In the event of an optional redemption of this bond, principal shall be applied in inverse chronological order of sinking fund installments due.

Notice of optional redemption identifying this bond or portions thereof (which shall be \$50,000 or a multiple thereof) to be redeemed shall be given by the Trustee, at least 5 business days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, or by sending a copy of the redemption notice via other standard means, including electronic or facsimile communication, to the Registered Owner. If this bond has been called for redemption in full and if funds are duly provided and set aside in accordance with the Authorizing Ordinance prior to the date fixed for redemption, this bond will cease to bear interest on such redemption date.

This bond is transferable by the Registered Owner, in whole or in part, to any person or entity in its sole and absolute discretion, in person or by his attorney-in-fact duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this bond. Upon such transfer a new fully registered bond, will be issued to the transferee in exchange therefor. This bond is issued with the intent that the laws of the State shall govern its construction. The City may not assign its rights or obligations hereunder or under the Authorizing Ordinance to any person without the prior written consent of the Registered Owner hereof.

The City and the Trustee may deem and treat the Registered Owner 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.

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 this bond do exist, have happened and have been performed in due time, form and manner as

required by law; that the indebtedness represented by this bond, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the revenues pledged to the payment of the principal of and premium, if any, and interest on the bond 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.

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF SECTION 265 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

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

CITY OF BARLING, ARKANSAS

ATTEST:

*Horene Brown*  
City Clerk

By *Wally Gatti*  
Mayor

(SEAL)

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is the City of Barling, Arkansas Water and Sewer Refunding Revenue Bond issued under the provisions of the within mentioned Authorizing Ordinance.

Date of Authentication: \_\_\_\_\_

REGIONS BANK  
Little Rock, Arkansas

By: \_\_\_\_\_





(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, City of Barling ("Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_, the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as attorney to transfer the within bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: 4-28-2020

Wally Galtis  
Transferor Mayor

GUARANTEED BY:

NOTICE: Signature(s) must be guaranteed by a member of or participant in the Securities Transfer Agents Medallion Program (STAMP), or in another signature guaranty program recognized by the Trustee.

Section 7. (a) The rates charged for services of the System heretofore fixed by ordinances of the City and the conditions, rights and obligations pertaining thereto, as set out in those ordinances, are hereby ratified, confirmed and continued.

(b) The City covenants and agrees that the rates shall never be reduced while the bond is outstanding unless there is obtained from an independent certified public accountant not in the regular employ of the City ("Accountant") a certificate that the Net Revenues ("Net Revenues" being defined as gross Revenues less the expenses of operation and maintenance of the System, including all expense items properly attributable to the operation and maintenance of the System under generally accepted accounting principles applicable to municipal water and sewer facilities, excluding depreciation, interest and bond amortization expenses), with the reduced rates, will always be equal to the amount required to be set aside for the Depreciation Fund (hereinafter identified) and any required debt service reserve funds, and leave a balance equal to at least 110% of the aggregate average annual principal and interest requirements on all outstanding bonds to which Revenues are pledged ("System Bonds").

(c) The City further covenants and agrees 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 aggregate average annual principal and interest requirements on all System Bonds, which Net Revenues shall also be sufficient to deposit the amount required to be paid into the Depreciation Fund and any required debt service reserve funds.

Section 8. The City covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell or lease the same, or any substantial portion thereof; provided, however, that nothing herein shall be construed to prohibit the City from making such dispositions of properties of the System and such replacements and substitutions for properties of the System as shall be necessary or incidental to the efficient operation of the System as a revenue-producing undertaking.

Section 9. The Treasurer of the City shall be custodian of the Revenues. Each employee of the City handling Revenues shall give bond for the faithful discharge of his or her duties in such amounts as approved by the Board of Directors. All Revenues shall at all times be accounted for separately and distinctly from other moneys of the City and shall be used and applied only as provided herein. Except as hereinafter provided, all Revenues 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 hereafter may be required by law, and provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC") or any successor entity. All deposits shall be in the name of the City and shall be so designated as to indicate the particular fund to which the Revenues belong. Except as hereinafter provided, all payments from the respective funds shall be by check or voucher, signed by two persons designated by the Board of Directors and drawn on the depository with which the moneys in the fund shall have been deposited and each such check or voucher shall briefly specify the purpose of the expenditure.

Section 10. All Revenues shall be deposited into a special fund hereby created and designated as the "Water and Sewer Revenue Fund" (the "Revenue Fund"). Moneys in the Revenue Fund are hereby pledged and 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 bond and other System Bonds, to the maintenance of debt service reserve funds at required levels, to the providing of the Depreciation Fund, and otherwise as described herein.

Section 11. There shall first be paid from the Revenue Fund into a fund hereby created and designated as the "Water and Sewer Operation and Maintenance Fund" (the "Operation and Maintenance Fund"), on or before 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 necessary to meet the requirements thereof during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred into the Revenue Fund.

Section 12. (a) After making the required payment into the Operation and Maintenance Fund, there shall be transferred from the Revenue Fund into a special fund in the name of the City which is hereby created with the Trustee and designated "2020 Water and Sewer Revenue Bond Fund" (the "Bond Fund"), the sums in the amounts and at the times hereinafter stated in subsection (b) for the purpose of providing funds for the payment of the principal of and interest on the bond as it matures.

(b) There shall be paid into the Bond Fund on the first business day of each month until the bond with interest thereon has been paid in full or provision made for such payment, a sum equal to 1/6 of the next installment of interest on the bond, plus 1/12 of the next installment of principal; provided, however, the payments through November 2020 shall be increased as necessary in order to make the debt service payment on December 1, 2020.

The City shall also pay into the Bond Fund such additional sums as necessary to provide for the Trustee's fees and expenses. The City shall realize a credit against monthly deposits into the Bond Fund from interest earnings on moneys in the Bond Fund and transfers of moneys held in connection with the Bonds Refunded.

If Revenues are insufficient to make the required payment on the first business day of the following 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.

When the moneys held in the Bond Fund shall be and remain sufficient to pay the principal of and interest on the bond plus Trustee's fees, the City shall not be obligated to make any further payments into the Bond Fund.

The Trustee shall withdraw from the Bond Fund on the due date for the principal and/or interest on the bond, at maturity or redemption prior to maturity, an amount equal to the amount of the bond and interest due thereon for the sole purpose of paying the same, together with the Trustee's fee and expenses. No withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance.

The bond shall be specifically secured by a pledge of all Revenues. This pledge in favor of the bond is hereby irrevocably made according to the terms of this Ordinance, and the City and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

Section 13. After making the required payments into the Operation and Maintenance Fund and the Bond Fund, there shall be paid from the Revenue Fund into a special fund hereby created and designated as the "Water and Sewer Depreciation Fund" (the "Depreciation Fund"), on or before the first business day of each month, a sum equal to 2% of the Revenues for the preceding month. Moneys in the Depreciation Fund shall be used solely for the purpose of paying the cost of necessary repairs or replacements made necessary by the depreciation of the System.

Section 14. Any surplus in the Revenue Fund after making all disbursements and providing for all funds described above may be used, at the option of the City, for any lawful municipal purpose authorized by the City.

Section 15. So long as the bond is outstanding, the City shall not issue or attempt to issue any bonds claimed to be entitled to a priority of lien on Revenues over the lien securing the bond. The City reserves the right to issue additional bonds to finance or pay the cost of constructing any future extensions, betterments or improvements to the System or to refund bonds issued for such purposes, but the City shall not authorize or issue any such additional bonds ranking on a parity with the bond unless there has been procured and filed with the Trustee and the Lender a statement by an Accountant reciting the opinion, based upon necessary investigation, that the Net Revenues (as defined in Section 7) for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 110% of the average annual principal and interest requirements on all the then outstanding System Bonds and the additional bonds then proposed to be issued. In making the computation set forth above, the City, and the Accountant on behalf of the City, may, based upon the opinion or report of an independent consulting engineer not in the regular employ of the City, treat any increase in rates for the System enacted subsequent to the first day of such preceding fiscal year as having been in effect throughout such fiscal year and may include in gross Revenues for such fiscal year the amount that would have been received, based on such opinion or report, had the increase been in effect throughout such fiscal year.

The additional bonds, the issuance of which is restricted and conditioned by this Section, shall not be deemed to mean bonds the security and source of payment of which are subordinate and subject to the priority of the bond, and such additional bonds may be issued without complying with the terms and conditions of this Section.

Section 16. The bond shall be subject to redemption prior to maturity in accordance with the terms set out in the bond form in Section 6 hereof. The City covenants and agrees to cause to be paid into the Bond Fund sufficient funds to redeem the bond in the amounts and on the dates set forth in the bond. 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 bond maturing on the next principal payment date and the principal of the bond which will be redeemed in accordance with the mandatory sinking fund redemption provisions of the bond on the next interest payment date scheduled for such redemption.

Section 17. (a) The City shall cause proper books of accounts and records to be kept (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 the bond 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 provided to the owner of the bond within 210 days after the end of each fiscal year; provided, however, that if the audited financial statements are unavailable on that date, the City will provide the owner with unaudited financial statements and will provide the audited financial statements to the owner within 30 days after receipt thereof. If the City changes its fiscal year, the City shall notify the owner in writing and shall provide audited

financial statements within 30 days after receipt thereof. In the event that the City fails or refuses to make the audit, the owner of the bond may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund. To the extent the City files such information on the electronic municipal market access website ("EMMA") of the Municipal Securities Rulemaking Board (the "MSRB") of the Securities and Exchange Commission, such requirement for delivery to the owner shall be deemed satisfied.

(b) The City shall provide to the owner an Annual Disclosure Report within 210 days after the end of each fiscal year that includes (i) annual information on the number of customers of the System by residential and commercial classification and (ii) the top ten customers of the System and the percentage of Revenues attributable to each. To the extent the City files such information on EMMA, such requirement for delivery to the owner shall be deemed satisfied.

Section 18. The City covenants that it will maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. While the bond is outstanding, the City agrees that it will insure and at all times keep insured, in the amount of the actual value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State 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 the State. 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 Revenue 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 available moneys in the Revenue 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. The insurance policies are to carry a clause making them payable to the Trustee as its interest may appear, and satisfactory evidence of said insurance shall be filed with the Trustee.

Section 19. The bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on the 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 fully insured by the FDIC and/or fully collateralized with Government Obligations (as hereinafter defined) sufficient to make such payment and/or (2) direct or fully guaranteed 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 ("Government Obligations") (provided that such deposit will not affect the tax exempt status of the interest on the bond or cause the bond to be classified as an "arbitrage bond" 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 to the bond with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of the bond within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owner of the bond, all such moneys and/or Government Obligations.

When the bond shall have been paid within the meaning of this Ordinance and if the Trustee has been paid its fees and expenses, 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 the bond to be paid over or delivered to or at the direction of the City. In determining the sufficiency of the deposit of Government Obligations there shall be considered the principal amount of such Government Obligations and interest to be earned thereon until the maturity of such Government Securities.

Section 20. If there occurs an Event of Default (as hereinafter defined), the Trustee may, and upon the written request of the owner of the bond, shall, by proper suit, compel the performance of the duties of the officials of the City under the laws of the State. And in the case of a default in the payment of the principal of and interest on the bond ("Payment Default"), the Trustee may, and upon written request of the owner of the bond, 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 owner of the bond 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 and maintenance and to pay the bond and interest outstanding and to apply the Revenues in conformity with the laws of the State and with this Ordinance. When all Payment Defaults have been cured, the custody and operation of the System shall revert to the City.

"Event of Default" shall mean the following:

(i) if the City fails to pay the owner of the bond when due any fee or expense incurred in connection with the issuance of the bond, subject to any limitations thereon;

(ii) any representation, warranty, certification or statement made by the City in connection with the issuance of the bond shall prove to have been incorrect in any material respect when made;

(iii) a final unappealable judgment or order for the payment of money in excess of \$5,000,000 payable from the Revenues is rendered against the City and such judgment or order shall continue unsatisfied and unstayed for a period of 60 days;

(iv) default by the City in the payment of debt service (or servicing fees) on the bond, additional parity bonds or subordinate lien obligations when due or within any applicable grace period;

(v) the occurrence of any event under any document executed in connection with additional parity bonds or subordinate lien obligations that results in or would entitle the obligee thereof or a trustee on behalf of such obligee to pursue any remedies against the City;

(vi) any material provision of any documents delivered in connection with the bond shall be at any time for any reason cease to be valid and binding on the City as a result of federal or state legislative or administrative action, or shall be declared in a final unappealable judgment by any court having jurisdiction over the City to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be contested by the City;

(vii) the powers of the City shall be limited in any way or this Ordinance shall be modified or amended in any way that prevents the City from fixing, charging or collecting Revenues in an amount sufficient to pay the bond, any additional parity bonds or subordinate lien obligations as they become due; and

(viii) default shall be made by the City in the performance or observance of any other covenants, agreements or conditions on its part in the documents delivered in connection with the bond and such default shall continue for a period of 30 days after written notice thereof to the City by the owner of the bond.

The owner shall not have any right to institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any power or right unless 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 owner shall have made written request of the Trustee after the right to exercise such power 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 granted to the Trustee, 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. Such notification, request and offer of indemnity are, at the option of the Trustee, conditions precedent to the execution of any remedy. No owner 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 thereunder except in the manner herein described. All proceedings at law or in equity shall be instituted, had and maintained in the manner herein described and for the benefit of the owner of the bond.

No remedy conferred upon or reserved to the Trustee or to the owner of the bond is intended to be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or by law. Upon the occurrence of an Event of Default, Lender may take any action permitted by law or equity, including without limitation, actions to petition a court of competent jurisdiction to issue

a mandamus order to the City to compel specific performance of the covenants and agreement of the City contained herein. In the event of a Payment Default, Lender shall have all the rights and powers afforded to other holders of System Bonds, if any, with respect to the appointment of a receiver, and so long as the bond shall remain outstanding, the Lender's consent to such appointment shall be required.

The Trustee may, and upon the written request of the owner of the bond 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.

All rights of action under this Ordinance or under the bond, enforceable by the Trustee, may be enforced by it without the possession of the bond, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of the owner of the bond, subject to the provisions of this Ordinance.

No delay or omission of the Trustee or of the owner of the bond 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 acquiescence therein; and every power and remedy given by this Ordinance to the Trustee and to the owner of the bond, respectively, may be exercised from time to time and as often as may be deemed expedient.

In any proceeding to enforce the provisions of this Ordinance any plaintiff bondholder shall be entitled to recover from the City all costs of such proceeding, including reasonable attorneys' fees.

Section 21. When the bond has been executed, it shall be authenticated by the Trustee and the Trustee shall deliver the bond to or at the direction of the Lender upon payment of the Purchase Price. The amount necessary to pay the expenses of issuing the bond shall be paid. The amount necessary from the Purchase Price to refund the Bonds Refunded shall be remitted to the trustee for the owners of the Bonds Refunded. The remainder of the Purchase Price, if any, shall be deposited into the Bond Fund.

Section 22. 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 owner of the bond and such water facilities shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of the bond, provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of the State in City of Harrison v. Braswell, supra.

Section 23. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or conditions to exist which causes or may cause the interest payable on the bond to be included in gross income for federal income tax purposes. Without



limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the bond and Revenues will not be used directly or indirectly in such manner as to cause the bond to be treated as an "arbitrage bond" 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 bond 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 bond during the term thereof is, under the terms of the bond 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 bond 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 bond during the term thereof is, under the terms of the bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said 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 said Private Business Use, then said excess over said 5% of Net Proceeds of the bond used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System.

The City shall assure that not in excess of 5% of the Net Proceeds of the bond 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 bond.

"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.

The City covenants that it will not enter into any wholesale water contracts with nongovernmental entities for the sale of water by the City if such contracts will cause a violation of this Section.

(c) The bond is hereby designated as a "qualified tax-exempt obligation" within the meaning of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 2020 are not reasonably expected to exceed \$10,000,000.

(d) The City covenants that it will take no action which would cause the bond 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.

(e) 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 bond is issued, a statement required by Section 149(e) of the Code.

(f) The City reasonably expects to spend all proceeds of the bond within six (6) months of the closing date.

(g) The City covenants that it will retain all documents and records pertaining to the bonds, the Bonds Refunded and the improvements to the System refinanced by the Bonds Refunded for the life of the bond plus an additional three (3) years.

Section 24. (a) Moneys held for the credit of the Bond Fund shall be continuously invested and reinvested pursuant to the written direction of the City, in Permitted Investments (as hereinafter defined), 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 payment date for interest or principal and interest.

(b) Moneys held for the credit of any other fund may be continuously invested and reinvested in Permitted Investments (as hereinafter defined), or other investments as may, from time to time, be permitted by 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 the moneys held for the credit of the particular fund will be required for purposes intended.

(c) Obligations so purchased as an investment of moneys in any fund 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.

(d) Moneys so invested in Government Obligations or in certificates of deposit of banks to the extent insured by FDIC, need not be secured by the depository bank or banks.

(e) "Permitted Investments" are defined as (i) Government Obligations, (ii) direct obligations of an agency, instrumentality or government-sponsored enterprise created by act of the United States Congress and authorized to issue securities or evidences of indebtedness, regardless of whether the securities or evidences of indebtedness are guaranteed for repayment by the United States Government, (iii) certificates of deposit or demand deposits of banks, including the Trustee, which are insured by FDIC or, if in excess of insurance coverage, collateralized by Government Obligations or other investments authorized by State law to secure public funds or (iv) money market funds invested exclusively in Government Obligations and the obligations described in (ii) above.

(f) All investments and deposits shall have a par value (or market value when less than par), exclusive of accrued interest at all times at least equal to the amount of money credited to such funds and shall be made in such a manner that the money required to be expended from any fund will be available at the proper time or times.

(g) Investments of moneys in all funds shall be valued in terms of current market value as of the last day of each year, except that direct obligations of the United States (State and Local Government Series) in book-entry form shall be continuously valued at par or face principal amount.

Section 25. (a) 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 bond 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 owner of the bond 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 giving 60 days' notice in writing to the City Clerk and to the owner of the bond, and the owner of the bond or the City, so long as the City is not in default under this Ordinance, at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Clerk. The original Trustee and any successor Trustee shall file a written acceptance and agreement to execute 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 owner of the bond agrees. 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.

(b) Every successor Trustee appointed pursuant to this Section shall be a trust company or bank duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$5,000,000.

(c) Any resignation by the Trustee shall not be effective until the appointment of a successor Trustee under this Section.

Section 26. In the event the office of Mayor, City Clerk, City Treasurer, or Board of Directors shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 27. All moneys in the bond fund and the debt service reserve being maintained in connection with the Bonds Refunded are hereby appropriated and shall be used to refund the Bonds Refunded. Any moneys not needed to accomplish the Refunding shall be deposited into the Bond Fund.


Section 28. 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 this Ordinance.

Section 29. All ordinances and resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

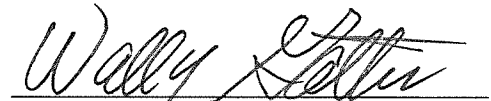
Section 30. It is hereby ascertained and declared that the Refunding must be accomplished as soon as possible in order to lower the interest cost on System Bonds. The Refunding cannot be accomplished without the issuance of the bond, which cannot be sold at the interest rate specified herein unless this 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: April 28, 2020

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED:

  
\_\_\_\_\_  
Mayor

(SEAL)



CERTIFICATE

The undersigned, City Clerk of the City of Barling, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 467, adopted at a regular session of the Board of Directors of the City of Barling, Arkansas, held at the regular meeting place of the Board of Directors in the City at 5:30 p.m., on the 28th day of April, 2020, and that said Ordinance is of record in Ordinance Record Book No. \_\_\_\_\_, Page \_\_\_\_\_, now in my possession.

GIVEN under my hand and seal this 28th day of April, 2020.

*Holene Brown*  
City Clerk

(SEAL)

