

TRIPLETT, WOOLF & GARRETSON, LLC

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ORDINANCE NO. 2949  
OF  
THE CITY OF PAOLA, KANSAS

PASSED  
August 14, 2007

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WATER SUPPLY SERVICE AGREEMENT  
MARAIS DES CYGNES PUBLIC UTILITY AUTHORITY  
MIAMI COUNTY, KANSAS

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ORDINANCE NO. 2949

AN ORDINANCE AUTHORIZING EXECUTION OF A WATER SUPPLY SERVICE AGREEMENT WITH THE MARAIS DES CYGNES PUBLIC UTILITY AUTHORITY; MAKING COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY OF OBLIGATIONS OF THE CITY IN THE AGREEMENT; AND AUTHORIZING NECESSARY DOCUMENTS AND ACTIONS RELATING TO THE AGREEMENT.

WHEREAS, the City of Paola, Kansas (the “City”) is a city of the second class, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “State”); and

WHEREAS, pursuant to provisions of K.S.A. 12-2901 *et seq.* (the “Act”), the City has entered into an Interlocal Cooperation Agreement with the City of Louisburg, Kansas, to organize and create the Marais Des Cygnes Public Utility Authority (the “Authority”); and

WHEREAS, the Authority has undertaken to acquire, construct, furnish and equip a water supply, treatment and distribution system (the “Project”) to provide a long-term wholesale public water supply for the mutual benefit of members of the Authority under the Interlocal Cooperation Agreement (the “Contracting Members”); and

WHEREAS, to provide funds to finance the Project, the Authority will issue its revenue bonds in one or more series (the “Bonds”) to be secured in part by revenues generated, and the assignment of the Authority’s rights under, a Water Supply Service Agreement with the City and similar agreements with other Contracting Members; and

WHEREAS, the City is a Contracting Member in the Authority and owns and operates a water utility system; and

WHEREAS, the City desires to participate in the Project; and

WHEREAS, K.S.A. 12-825j authorizes the City to enter into contracts with any person, firm, corporation or other municipality to purchase water upon terms and conditions deemed necessary and reasonable by the governing body of the City, including provisions for the purchase of water not actually received; provided the contract does not exceed term of forty (40) years; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PAOLA, KANSAS, AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 101. **Definitions of Words and Terms.** Words and phrases not otherwise defined in this Ordinance or in the Water Supply Service Agreement shall have the meanings given in this Article I. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

“**Act**” means the Constitution and statutes of the State, including K.S.A. 12-101 *et seq.*; K.S.A. 12-825j; and K.S.A. 12-2901 *et seq.*, all as amended and supplemented from time to time.

“**Additional Bonds**” means any bonds issued by the City under Article 803 of this Ordinance and secured by the Revenues.

“**Additional Indebtedness**” means Additional Bonds and Additional Obligations.

“**Additional Indebtedness Ordinance**” means this Ordinance and the ordinances or resolutions under which any Additional Indebtedness is authorized.

“**Additional Obligations**” means leases or other obligations of the City payable from the Revenues, but does not include Additional Bonds or Operating Expenses.

“**Agreement**” means the Water Supply Service Agreement between the City and the Authority, dated as of September 1, 2007, as amended according to its terms.

“**Agreement Obligations**” means the payments the City is required to make to the Authority under the Agreement.

“**Authority**” means the Marais Des Cygnes Public Utility Authority, Miami County, Kansas.

“**Balloon Indebtedness**” means Long-Term Indebtedness, 25% or more of the original amount of which becomes due during any consecutive twelve (12) month period, if such amount becoming due is not required to be amortized below such percentage by mandatory prepayment prior to that twelve (12) month period.

“**Bond Counsel**” means the firm of Triplett, Woolf & Garretson, LLC, Wichita, Kansas or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

“**Bond Insurance Policy**” means, with respect to the Series 2007 Bonds, the financial guaranty insurance policy issued by the Bond Insurer and insuring the payment when due of the principal of and interest on the Series 2007 Bonds according to its terms.

“**Bond Insurer**” means, with respect to the Series 2007 Bonds, Assured Guaranty Corp., New York, New York, or any successor or assign.

“**Bond Payment Date**” means any date on when principal of or interest on Bonds is scheduled for payment.

“**Bonds**” means the Series 2007 Bonds and any Additional Bonds of the Authority issued under the Indenture and secured in whole or in part by the Agreement.

“**Business Day**” means a day other than a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which the Trustee is scheduled to be open to the public for conduct of its normal operations.

“**City**” means the City of Paola, Kansas.

“**Clerk**” means the duly appointed and/or elected Clerk of the City or, in the Clerk’s absence, the duly appointed Deputy Clerk or Acting Clerk of the City.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the applicable regulations issuer under the Code by the United States Department of the Treasury.

“**Consultant**” means the Consulting Engineer (acceptable to the Bond Insurer), the Independent Accountant or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the City for the purpose of performing duties of a Consultant defined in this Ordinance.

“**Coverage Ratio**” means, for any Fiscal Year: (a) with respect to covenants in Sections 702(B) and 803 of this Ordinance, the ratio determined by dividing (i) a numerator equal to the Net Operating Revenues for that Fiscal Year by (ii) a denominator equal to the Water Base Charge for such Fiscal Year; and (b) with respect to the covenants in Sections 702(C) and 802(B) of this Ordinance, the ratio determined by dividing (i) a numerator equal to the Net Revenues for that Fiscal Year by (ii) a denominator equal to the Maximum Annual Debt Service on all Additional Indebtedness.

“**Dated Date**” means September 1, 2007.

“**Debt Service Requirements**” means the aggregate principal payments (whether at Stated Maturity or upon scheduled mandatory sinking fund redemption requirements) and interest payments on Additional Indebtedness for the period of time calculated; provided, however, that in calculating Debt Service Requirements, principal and interest on Additional Obligations that is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers shall not be included in the calculation of Debt Service Requirements.

“**Derivative**” means any investment instrument with a market price derived from the fluctuating value of an underlying asset, index, currency, futures contract, options and collateralized mortgage obligations.

“**Discount Indebtedness**” means Long-Term Indebtedness that originally sold at a price (excluding accrued interest, but without deduction of any underwriters’ discount) of less than 75% of the amount to be repaid including the amount of principal and interest to accrete at maturity of such Long-Term Indebtedness.

“**Event of Default**” means each of the following occurrences or events:

(A) Payment of the Agreement Obligations is not be made when due and payable; or

(B) The City, for any reason, becomes incapable of fulfilling its obligations under this Ordinance; or

(C) Any substantial part of the System is destroyed or damaged to the extent of impairing its efficient operation or adversely affecting its Revenues and the City does not begin repair, replacement or reconstruction of the System within a reasonable time or the City fails to complete any such repair, replacement or reconstruction with reasonable dispatch; or

(D) Final judgment for the payment of money is rendered against the City as a result of the ownership, control or operation of the System and such judgment is not discharged within one hundred twenty (120) days from its entry or effective date or an appeal is not taken from the judgment or from the order, decree or process by or pursuant to which such judgment was granted or entered, in a manner that has the effect of staying the enforcement of or execution of or levy under such judgment, order, decree or process; or

(E) An order or decree is entered, with the consent or acquiescence of the City, appointing a receiver or receivers of all or any part of the System or the revenues derived from the System, or such an order or decree is entered without the consent or acquiescence of the City and is not be vacated or discharged or stayed on appeal within sixty (60) days after its entry or effective date; or

(F) Any proceeding is instituted, with the consent or acquiescence of the City, for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or later enacted, if the claims of such creditors are under any circumstances payable from the Net Revenues of the System; or

(G) A monetary default occurs on any Additional Indebtedness.

(H) The City defaults in the due and punctual performance of any of its covenants, conditions, agreements and provisions in the Agreement or in this Ordinance (other than those described in (A) through (G) above and the covenants relating to continuing disclosure contained in Article XII) and such default continues for thirty (30) days after written notice specifying the default and requiring its remedy is given to the City by the Authority or the Trustee.

“**Expenses**” means Operating Expenses and Water Base Charges.

“**Fiscal Year**” means the twelve month period ending on December 31.

“**Fitch**” means Fitch, Inc., a corporation organized and existing under the laws of the state of New York, and its successor and assigns, and if such corporation is dissolved or liquidated or no longer acts as a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“**Funds and Accounts**” means funds and accounts created by this Ordinance or referred to in Article IV.

“**Independent Accountant**” means an independent certified public accountant or firm of independent certified public accountants employed by the City to carry out the duties of the Independent Accountant described in this Ordinance.

“**Index Rate**” means the rate of interest set forth in The Bond Buyer Revenue Bonds Index (or, in the event that The Bond Buyer does not compile such index or ceases publication, another comparable publication recognized in the municipal bond market) published for the week immediately preceding the date of determination.

“**Insurance Consultant**” means an individual or firm selected by the City and acceptable to the Bond Insurer and qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to the System and having a favorable reputation for skill and experience in making such surveys and recommendations.

“**Interim Indebtedness**” means Additional Indebtedness having a term not less than one year and not more than five years, incurred or assumed with the intent that it will be refinanced or refunded with Long-Term Indebtedness.

“**Issue Date**” means the date when the City delivers any Additional Indebtedness to a purchaser in exchange for the purchase price thereof.

“**Long-Term Indebtedness**” means Additional Indebtedness with an original stated maturity or term longer than one year, or that is renewable or extendible at the option of the debtor for a term longer than one year from the date it is originally issued or incurred.

“**Maturity**” means, when used with respect to any Additional Indebtedness, a date the principal of Additional Indebtedness becomes due and payable, whether at the Stated Maturity, upon call for redemption before the Stated Maturity or otherwise.

“**Mayor**” means the duly elected and acting Mayor, or in the Mayor’s absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

“**Maximum Annual Debt Service**” means the maximum amount of Debt Service Requirements as computed for the current or any future Fiscal Year; provided that the Debt Service Requirements in the final Stated Maturity of any Additional Indebtedness shall be reduced by the value of cash and Permitted Investments on deposit in any reserve account for such Additional Indebtedness.

“**Moody’s**” means Moody’s Investor’s Service, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successor and assigns, and if such corporation is dissolved or liquidated or no longer acts as a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“**Net Operating Revenues**” means, for the period of determination, all Revenues less all Operating Expenses.

“**Net Revenues**” means, for the period of determination, all Revenues less all Expenses.

“**Notice Address**” means with respect to the following entities:

(A) To the City:

City of Paola, Kansas  
Attn: City Clerk  
P.O. Box 409, 19 E. Peoria  
Paola, Kansas 66071  
(913) 259-3600 (Phone)  
(913) 259-3610 (Fax)

(B) To the Authority:

Marais Des Cygnes Public Utility Authority  
Attn: Secretary  
P.O. Box 409, 19 E. Peoria  
Paola, Kansas 66071  
(913) 259-3600 (Phone)  
(913) 259-3610 (Fax)

(C) To the Bond Insurer:

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, New York 10019  
Attn: General Counsel

With a copy to:

Risk Management Department – Public Finance Surveillance  
(212) 974-0100 (Phone)  
(212) 581-3268 (Fax)  
E-mail: RiskManagementDept@assuredguaranty.com

(D) To the Trustee:

Security Bank of Kansas City  
701 Minnesota Ave., Suite 206  
Kansas City, Kansas 66117  
Attn: Corporate Trust Department  
(913) 279-7946 (Phone)  
(913) 279-7960 (Fax)

or such other address as is furnished in writing to the other parties.

**“Notice Representative”** means:

- (A) With respect to the City, the City Clerk;
- (B) With respect to the Authority, the Secretary;
- (C) With respect to the Bond Insurer, its General Counsel, with a copy to its Risk Management Department – Public Finance Surveillance; and
- (D) With respect to the Trustee, a Corporate Trust Officer.

**“Operating Expenses”** means all reasonable and necessary expenses of operation, maintenance and repair of the System and keeping the System in good repair and working order (other than interest paid on Additional Indebtedness and depreciation and amortization charges during the period of determination and not including amount transferred from the Water System Surplus Account to other funds of the City), determined in accordance with accounting principles permitted under laws of the State for municipalities, including, without limiting the generality of the foregoing, all amounts and charges due and payable under the Agreement (other than Water Base Charges), current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, paying agent fees and expenses, annual audits, periodic Consultant’s reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power if any, for System operation, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of

business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, Short-Term Indebtedness incurred and payable within a particular Fiscal Year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the System, but shall exclude all general administrative expenses of the City not related to the operation of the System and transfers into the Operating Reserve Account and Depreciation and Replacement Account provided for in this Ordinance.

**“Operating Reserve Account”** means Water Utility System Operating Reserve Account created by Section 401.

**“Operating Reserve Requirement”** means, during any Fiscal Year, an amount equal to the average monthly Agreement Obligations budgeted for such Fiscal Year, multiplied by two.

**“Operation and Maintenance Account”** means the Water Utility System Operation and Maintenance Account created by Section 401.

**“Ordinance”** means this Ordinance.

**“Outstanding”** with respect to the Agreement Obligations means, of a particular date when the Agreement remains effective, amounts remaining to be paid by the City pursuant to the Agreement, and with respect to the Bonds, shall have the meaning assigned in the Indenture.

**“Permitted Investments”** means the investments authorized for public moneys or funds described by K.S.A. 12-1675 and amendments thereto, or otherwise permitted under the laws of the State.

**“Purchaser”** means, with respect to the Series 2007 Bonds, Piper Jaffray & Co., Leawood, Kansas and George K. Baum & Co., Kansas City, Missouri, the original purchaser of the Series 2007 Bonds, and any successor and assigns.

**“Person”** means any natural person, corporation, partnership, joint venture, association, firm, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**“Project”** means the acquiring, purchasing, constructing and equipping by the Authority of raw water intake structures, a raw water treatment plant, water transmission lines, elevated storage tanks and all things necessary and incidental, including, but not limited to, engineering and design services, geotechnical services, acquisition of land and/or easements, legal services, interest during construction, inspection, and initial acquisition of certain water rights.

**“Put Indebtedness”** means Long-Term Indebtedness which is (a) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, at the option of the holder, prior to its stated maturity date, or (b) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor prior to its stated maturity

date, but other than at the option of the holder or pursuant to redemption from the operation of any mandatory sinking fund or other similar fund, or other than by reason of acceleration when an Event of Default has occurred under this Ordinance.

“**Rating Agency**” means Moody’s, Standard & Poor’s, Fitch and any other company, agency or entity that provides ratings for any Bonds.

“**Revenue Fund**” means the Water Utility System Revenue Fund created by Section 401.

“**Revenues**” means all income and revenues derived and collected by the City from the operation and ownership of the System and the providing of water to residents of the City, including investment and rental income, net proceeds from business interruption insurance, transfers from the Surplus Account to the Revenue Fund of Net Operating Revenues derived in a prior Fiscal Year, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition of investments or fixed or capital assets not in the ordinary course of business.

“**SEC Rule**” means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time.

“**Securities Depository**” means, initially, The Depository Trust Company, New York, New York (DTC), and its successors and assigns.

“**Series 2007 Bonds**” means the Authority’s Water Facilities Revenue Bonds, Series 2007 (Cities of Louisburg, Kansas and Paola, Kansas Project), dated as of the Dated Date.

“**Short-Term Indebtedness**” means Additional Indebtedness having an original maturity or term less than or equal to one year from the date of its incurring or original issuance, and not renewable or extendible at the option of the obligor for a term longer than one year.

“**Standard & Poor’s**” means Standard & Poor’s Ratings Services, a Division of the McGraw-Hill Companies, New York, New York, a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and if such corporation is dissolved or liquidated or no longer acts as a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“**State**” means the State of Kansas.

“**Stated Maturity**” means, when used with respect to any System Obligation or any installment payment (of interest or otherwise) thereon, the date specified in such System Obligation as the fixed date on which any payment obligation (of principal, interest or otherwise) is due and payable.

“**Surplus Account**” means the Water Utility System Surplus Account created by Section 401.

“**System**” means the entire waterworks system owned and operated by the City for the production, storage, treatment and distribution of water to serve the needs of the City and its inhabitants and others, including all connected and related appurtenances and facilities, together with all extensions, improvements, additions and enlargements later made or acquired by the City.

“**System Indebtedness**” means, collectively, the Agreement Obligations, Additional Bonds and any Additional Obligations which are payable out of, or secured by an interest in, the income and Revenues derived from the operation of the System.

“**Treasurer**” means the duly appointed and/or elected Treasurer or, in the Treasurer’s absence, the duly appointed Deputy Treasurer or acting Treasurer of the City.

“**Trustee**” means the Trustee designated in the Indenture, which shall initially be Security Bank of Kansas City, Kansas City, Kansas.

“**United States Government Obligations**” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the City.

“**Variable Rate Indebtedness**” means any Additional Indebtedness which provides for interest payable at a rate per annum that may vary from time to time over the term of such Additional Indebtedness according to the instrument creating such Additional Indebtedness.

“**Water Base Charge**” means the Water Base Charge as defined in the Agreement, and refers to amounts the City agrees to pay under the Agreement respecting Debt Service on the Bonds and deposits to the Debt Service Fund created by the Indenture.

## ARTICLE II

### AUTHORIZATION OF THE AGREEMENT

**Section 201. Authorization of the Agreement.** The Agreement is authorized and approved and the Mayor and the City Clerk are authorized and directed to execute the Agreement on behalf of the City in substantially the form presented to the governing body with this Ordinance, with such changes as may be approved by the Mayor and Bond Counsel. The City acknowledges and agrees that the Authority will assign its interests in the Agreement to the Trustee as security for the Bonds and such assignment is hereby approved by the City.

**Section 202. Calculation of Debt Service Requirements.** The following standards shall apply to calculation of Debt Service Requirements (past or projected) for purposes of this Ordinance.

(A) Debt Service Requirements on Balloon, Put, Short-Term and Interim Indebtedness.

(1) The amount of Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness treated as Long-Term Indebtedness under Section 802 of this Ordinance, or Interim Indebtedness shall be deemed due and payable at its Stated Maturity; provided, however, at the election of the City, principal payable on Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness treated as Long-Term Indebtedness under Section 802 or on Interim Indebtedness, may be considered payable as follows:

(a) If the City has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency) to refinance such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(b) If the City has entered into a binding agreement providing for the deposit by the City with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency), in a trust account (a “Special Redemption Fund”) of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, and such principal is payable when due from the sums so deposited and investment earnings realized in the Special Redemption Fund, then the principal amount of the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(c) If the City has entered into arrangements or agreements with respect to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, other than those referred to in subsections (a) and (b) above, and a Consultant

has determined and certified in document filed with the City, that such arrangement or agreement, taking into account the interests of the Owners of System Indebtedness, provides adequate assurances that the City will be able to meet the Debt Service Requirements due on such System Indebtedness, then such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may be deemed to be payable in accordance with the terms of such arrangements or agreements; or

(d) Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness may be deemed to be Additional Indebtedness which, at the date it was incurred, was payable over a term not to exceed twenty (20) years in equal annual installments of principal and interest at the Index Rate; provided that; a Consultant delivers to the City a certificate stating that it is reasonable to assume that installment obligations of the City of that term can be incurred and stating the interest rate then applicable to installment obligations of similar term and comparable quality. Interim Indebtedness may be deemed to be Additional Indebtedness which, at the date it was incurred, would meet the conditions specified in the statement of the Consultant as required in Section 802(b)(3)(ii); provided that, the Consultant shall for each annual period that the Debt Service Requirement is computed, provide a supplemental statement that during such period, the certifications contained in the Consultant's original statement remain reasonable.

(2) Interest payable before the Stated Maturity of any Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness shall accounted for in computation of Debt Service Requirements. Interest payable at the Stated Maturity or early redemption on Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may either be amortized over the anticipated maturity or longer period as is permitted under Section 802 or Section 202(A)(1)(d), or such interest may be treated as principal payable on the Stated Maturity or redemption date of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness.

(3) For purposes of this Ordinance and the tests provided herein for measuring compliance with the standards for incurring Put Indebtedness and generally for purposes of determining the Debt Service Requirements, Put Indebtedness shall be deemed to mature based upon the actual amortization requirements for the Put Indebtedness, only to the extent that the City has a commitment to refinance such Put Indebtedness.

(B) Debt Service Requirements on Discount Indebtedness. At the election of the City, the principal and interest deemed payable on Discount Indebtedness may be deemed payable as follows:

(1) If the City has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency) to refinance such Discount Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Discount Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing agreement;

(2) If the City has entered into a binding agreement providing for the deposit with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated “A” or better by any Rating Agency), in a trust account (a “Special Redemption Fund”) of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Discount Indebtedness, or a portion thereof, and providing for the payment of such principal amount when due from the sums so deposited in the Special Redemption Fund, and investment earnings realized thereon, then the Discount Indebtedness, or a portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(3) If the City has entered into arrangements or agreement with respect to the principal amount of such Discount Indebtedness, other than those referred to in subsections (1) and (2) above, and a Consultant has determined and certified in document filed with the City, that such arrangement or agreement, taking into account the interests of the Owners of System Indebtedness, provides adequate assurances that the City will be able to meet the Debt Service Requirements due on such System Indebtedness, then such Discount Indebtedness may be deemed to be payable in accordance with the terms of such arrangements or agreements; or

(4) As of any time the maturity amount represented by Discount Indebtedness shall be deemed to be the accreted value of such Additional Indebtedness computed on the basis of a constant yield to maturity.

(C) Debt Service Requirements on Variable Rate Indebtedness. When calculating interest requirements on Variable Rate Indebtedness for period in which the rate of interest has not been determined, the rate of interest on Outstanding Variable Rate Indebtedness shall be the average annual rate of interest which was payable on such Variable Rate Indebtedness during the twelve (12) months immediately preceding the date as of which the calculation is made; and the rate of interest on Variable Rate Indebtedness to be incurred (or incurred less than twelve (12) months preceding such date) shall be the average annual rate of interest which would have been payable on such Variable Rate Indebtedness had it been outstanding for a period of twelve (12) months immediately preceding the date as of which the calculation is made, all as set forth in a certificate of a Consultant, delivered to the City.

## ARTICLE III

### SECURITY FOR AGREEMENT

**Section 301. Security for the Agreement.** The Agreement Obligations of the City shall constitute an Expense of the System, payable solely from, and secured as to the payment of it by a pledge of the Revenues. The City hereby pledges the Revenues to the payment of the Agreement Obligations. The Agreement Obligations shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Agreement Obligations.

The City's Agreement Obligations shall not have any priority with respect to payment from the Revenues or otherwise over other Operating Expenses and other Operating Expenses shall not have any priority with respect to payment from the Revenues or otherwise over the Agreement Obligations.

## ARTICLE IV

### ESTABLISHMENT OF FUNDS AND ACCOUNTS; DEPOSIT OF BOND PROCEEDS

**Section 401. Creation of Funds and Accounts.** Simultaneously with the issuance of the Series 2007 Bonds, the following funds and accounts are created in the Treasury of the City:

- (A) Water Utility Revenue Fund;
- (B) Water Utility Operation and Maintenance Account;
- (C) Water Utility Operating Reserve Account;
- (D) Water Utility Surplus Account.

The funds and accounts established by this Section shall be administered in accordance with the provisions of this Ordinance for as long as Agreement Obligations remain effective.

## ARTICLE V

### COLLECTION AND APPLICATION OF REVENUES

**Section 501. Revenue Fund.** The City covenants and agrees that from and after the beginning of the first Contract Year (as defined in the Agreement), and continuing as long as the Agreement remains in effect, all of the Revenues derived and collected from the operation of the System shall be paid and deposited into the Revenue Fund as and when received. The Revenues

shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City and shall not be commingled with any other moneys, revenues, funds and accounts of the City. The Revenue Fund shall be administered and applied only for the purposes and in the manner provided in this Ordinance.

**Section 502. Application of Moneys in Funds and Accounts.** The City covenants and agrees that, on the first day of each month, it will administer and allocate all of the moneys then in the Revenue Fund in the following manner and order:

(A) *Operation and Maintenance Account.* There shall first be paid and credited to the Operation and Maintenance Account an amount sufficient to pay the estimated Expenses of the System during the ensuing month. All amounts paid or credited to the Operation and Maintenance Account shall be expended and used by the City solely for the purpose of paying the Expenses of the System.

(B) *Operating Reserve Account.* After making the payments and credits to the Operation and Maintenance Account required by paragraph (A) above, the City will pay the amount of \$5,000 each month into the Operating Reserve Account until the amount in such Account equals the Operating Reserve Requirement. Except as otherwise provided in this Section, all amounts paid and credited to the Operating Reserve Account shall be expended and used by the City solely to prevent any default in the payment of Expenses of the System if the moneys in the Operation and Maintenance Account are insufficient to pay such Expenses as they become due. If the Operating Reserve Account aggregates the Operating Reserve Requirement, no payments into the Operating Reserve Account shall be required, but if the City is ever required to expend and use a part of the moneys in the Operating Reserve Account for the purpose authorized here and causes the amount of the Operating Reserve Account to fall below the Operating Reserve Requirement, or if the valuation of the Operating Reserve Account as provided in Section 601 establishes that the value of the Operating Reserve Account is below the Operating Reserve Requirement, the City, after providing for the transfers described in subparagraph (A) above, shall make monthly transfers of available Revenues into the Operating Reserve Account, so that within twelve (12) months the Operating Reserve Account shall aggregate the Operating Reserve Requirement.

(C) *Surplus Account.* After all payment and credits required by the provisions of the preceding paragraphs (A) and (B) are made, all moneys remaining in the Revenue Funds shall be paid and credited to the Surplus Account. Moneys in the Surplus Account may be expended and used for the following purposes as determined by the governing body of the City:

(1) Paying the cost of the operation, maintenance and repair of the System to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Account under the provisions of paragraph (A) of this Section;

(2) Paying the cost of extending, enlarging or improving the System;

(3) Preventing default in, anticipating payments into or increasing the amounts in the any debt service account for Additional Indebtedness, the Operating Reserve Account or the Depreciation and Replacement Account referred to in this Section, or any one of them;

(4) Prepaying all or a part of the Agreement Obligations or calling, redeeming and paying prior to Stated Maturity, or, at the option of the City, purchasing in the open market at the best price obtainable not exceeding the redemption price (if callable), any Additional Indebtedness, including principal, interest and redemption premium, if any;

(5) Any other lawful purpose in connection with the operation of the System and benefiting the System;

(6) To make transfers to the Revenue Fund;

(7) To make lawful transfers to any fund of the City.

(E) *Deficiency of Payments into Funds and Accounts.* If at any time the Revenues derived from the operation of the System are insufficient to make any payment on the date or dates required by this Section 502, the City will make good the amount of such deficiency by making additional payments or credits out of the first available Revenues received from the operation of the System thereafter and such payments and credits shall be made and applied in the order specified in this Section 502.

**Section 503. Transfer of Funds to the Authority or Trustee.** The Treasurer of the City is authorized and directed to withdraw from the Operation and Maintenance Account and, to the extent necessary to prevent a default in the payment of the Agreement Obligations, from the Operating Reserve Account and the Surplus Account as provided in Section 502, sums sufficient to pay the Agreement Obligations as and when the same become due, and to forward such sums to the Authority or the Trustee.

## ARTICLE VI

### DEPOSIT AND INVESTMENT OF MONEYS

#### **Section 601. Deposits and Investment Moneys; Valuation.**

(A) Moneys in each of the Funds and Accounts shall be deposited and secured as required by the laws of the State for City funds.

(B) Moneys held in any Fund or Account may be invested in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such fund was

created. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account; except that, all earnings on investments held in the Operating Reserve Account shall accrue to and become a part of the Operating Reserve Account until the amount on deposit in the Operating Reserve Account equals the Operating Reserve Requirement; thereafter, all earnings from investment of the Operating Reserve Account shall be credited to the Revenue Fund.

(C) In determining the amount held in any Fund or Account under any of the provisions of this Ordinance, Permitted Investments shall be valued at the lower of the cost or the market value of such Permitted Investment. The City agrees to make valuation of the Funds and Accounts as of January 1 of each year. If the valuation reveals that the amount held in any Fund or Account is more than required by this Ordinance, the City may pay and credit any excess to the Revenue Fund.

## ARTICLE VII

### GENERAL COVENANTS AND PROVISIONS

The City covenants and agrees that so long as the Agreement remains in effect, it will comply with each of the following covenants:

**Section 701. Efficient and Economic Operation.** The City will continuously own and will operate the System as a revenue producing facility in an efficient and economical manner and will keep and maintain the System in good repair and working order. The City will establish and maintain rules and regulations for the use of the System as may be necessary to assure maximum utilization and most efficient operation of the System.

**Section 702. Rate Covenant.** The City, in accordance with and subject to applicable legal requirements, will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the System as will produce Revenues sufficient to (a) pay the Expenses of the System; (b) enable the City to have in each Fiscal Year, a Coverage Ratio of not less than 125% of the Water Base Charges; (c) enable the City to have in each Fiscal Year a Coverage Ratio of not less than 110% on any Additional Indebtedness; and (d) provide reasonable and adequate reserves for the payment of Additional Indebtedness and for the protection and benefit of the System as provided in this Ordinance. The City will require the prompt payment of accounts for service rendered by or through the System and will promptly take whatever action is legally permissible to enforce and collect delinquent charges. The City will, from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges for services of the System as may be necessary or proper so that the Revenues, Net Revenues and Net Operating Revenues will be sufficient to meet the requirements of this Section and the other provisions of this Ordinance. If in any Fiscal Year, Revenues, Net Revenues or Net Operating Revenues are insufficient to comply with this Section, the City will immediately employ a Consultant to make recommendations with respect to such rates and charges. A copy of the Consultant's report and recommendations shall be filed

with the City Clerk, the Bond Insurer and the Authority. The City shall, to the extent permitted by law, follow the recommendations of the Consultant.

**Section 703. Reasonable Charges for all Services.** None of the facilities or services provided by the System will be furnished to any user (excepting the City itself) without a reasonable charge being made for such services. If the Revenues derived from the System are at any time insufficient to pay the reasonable Expenses of the System and the Debt Service Requirements of any Additional Indebtedness as and when the same become due, then the City will pay into the Revenue Fund a fair and reasonable payment in accordance with effective applicable rates and charges for all services of the System or other facilities of the System furnished to the City or any of its departments, and such payments will continue as long as the necessary in to prevent or reduce the amount of any default in the payment of Expenses or the Debt Service Requirements of any Additional Indebtedness.

**Section 704. Restrictions on Mortgage or Sale of System.** The City will not mortgage, pledge or otherwise encumber the System or any part thereof, nor will it sell, lease or otherwise dispose of the System or any material part thereof; provided, however, the City may:

(A) sell at fair market value any portion of the System which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the System, and in the event of sale, the City will apply the proceeds to either: (1) redeem or prepay first, any remaining Agreement Obligations or second, Additional Indebtedness then outstanding and in accordance with the provisions governing repayment or redemption of such obligations in advance of their Stated Maturity, or (2) replace the property so disposed of by other property which shall become a part of the System as provided in this Ordinance;

(B) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the City;

(C) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken complying with Article VIII of this Ordinance; or

(D) sell, lease or convey all or substantially all of the System to another entity or enter into a management contract with another entity if:

(1) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Code § 501(c)(3), and such entity expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all Outstanding System Indebtedness according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Ordinance;

(2) If there remains unpaid any System Indebtedness which bears interest that is not includable in gross income under the Code, the City receives an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such System Indebtedness, would not cause the interest payable on such System Indebtedness to become includable in gross income under the Code;

(3) The City receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Ordinance;

(4) Such transferee entity possesses such licenses to operate the System as are required to operate the System;

(5) The City receives an opinion of Bond Counsel, in form and substance satisfactory to the City, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section; and

(6) The City receives the prior written consent of the Bond Insurer, if Bonds insured by the Bond Insurer are Outstanding and the Bond Insurance Policy remains in effect.

**Section 705. Insurance.** The City will carry and maintain insurance with respect to the System and its operations against such casualties, contingencies and risks (including, but not limited to, property and casualty, fire and extended coverage insurance upon all of the properties forming a part of the System insofar as the same are of an insurable nature, public liability, business interruption or use and occupancy insurance, worker's compensation and employee dishonesty insurance), such insurance to be of the character and coverage and in such amounts as would normally be carried by other enterprises engaged in similar activities of comparable size and similarly situated; provided, the amount of such liability insurance shall be in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State's tort claims act or other similar future law (currently \$500,000 per occurrence). Such insurance shall be issued by an insurance company whose claims paying ability is rated at least "A" by Standard & Poor's or "A.M." by Best.

**Section 706. Books, Records and Accounts.** The City will install and maintain proper books, records and accounts (entirely separate from all other records and accounts of the City) in which complete and correct entries will be made of all dealings and transactions of or in relation to the System. Such accounts shall show the amount of Revenues received from the System, the application of such Revenues, and all financial transactions in connection therewith. Said books shall be kept by the City according to the accounting principles as applicable to the operation of municipal utilities permitted by the laws of the State. The City shall make comparative quarterly

reports to the City Manager showing current Revenues, Expenses, Net Revenues and Net Operating Revenues.

**Section 707. Annual Budget.** Before the beginning of each Fiscal Year, the City will cause to be prepared and filed with the Clerk a budget setting forth the estimated receipts and expenditures of the System for the next succeeding Fiscal Year. The Clerk will mail a copy of the budget to the Authority and the Bond Insurer promptly after it is filed in the Clerk's office. The annual budget shall be prepared according to requirements of the laws of the State and shall contain all information that is required by such laws, including:

(A) An estimate of the Revenues from the System during the next ensuing Fiscal Year.

(B) A statement of the estimated Expenses of the System during the next ensuing Fiscal Year.

(C) A statement of any anticipated unusual Expenses for the System during the next Fiscal Year.

(D) A statement of any necessary repairs or replacements to the System which may be anticipated during the next Fiscal Year.

(E) A statement of the amount to be paid on System Indebtedness to be paid from Revenues, Net Revenues or Net Operating Revenues of the System during the next Fiscal Year.

(F) A statement of the estimated Net Revenues and Net Operating Revenues during the next Fiscal Year.

**Section 708. Annual Audit.** Each year, promptly after the end of the Fiscal Year, the City will cause an audit to be made of the System for the preceding Fiscal Year by an Independent Accountant to be employed for that purpose and paid from the Revenues of the System. The annual audit shall cover in reasonable detail the operation of the System during such Fiscal Year. The report of the annual audit shall include:

(A) A classified statement of the Revenues received, the Expenses for operation and maintenance, the Net Revenues, and the Net Operating Revenues and the amount of any capital expenditures made in connection with the System during the previous Fiscal Year;

(B) A complete balance sheet as of the end of each Fiscal Year with the amount on hand at the end of such Fiscal Year in each of the Funds and Accounts created by and referred to in this Ordinance;

(C) A statement of all System Indebtedness matured or redeemed and interest paid thereon during said Fiscal Year;

(D) A statement of the number of customers served by the System at the beginning and the end of such Fiscal Year;

(E) A statement showing the amount and character of the insurance carried on the property constituting the System and showing the names of the insurers, the expiration dates of the policies and the premiums thereon; and

(F) Such remarks and recommendations regarding the practices and procedures of operating the System and its accounting practices as the Independent Accountant deems appropriate.

Within 30 days after the completion of each annual audit, a copy of the report shall be filed in the office of the Clerk and a duplicate copy shall be mailed to the Authority and to the Bond Insurer. The audit reports shall be open to the examination and inspection by any user of the services of the System, the Authority or by the Trustee at all times during the usual business hours of the City.

As soon as possible after the completion of the annual audit, the governing body of the City shall review the report of such audit, and if the audit report discloses that proper provision has not been made for all of the requirements of this Ordinance and the Act, the City will promptly cure such deficiency and will promptly proceed to modify the rates and charges to be charged for the use and services furnished by the System or take such other action as may be necessary to adequately provide for such requirements.

**Section 709. Right of Inspection.** The Authority, the Bond Insurer and the Trustee shall have the right at all reasonable times to inspect the System and all records, accounts and data relating thereto and shall be furnished all such information concerning the System and its operation which the Authority or the Trustee may reasonably request.

**Section 710. Administrative Personnel.** The City shall use its best efforts to employ at all times administrative personnel experienced and well-qualified to operate the System. The City further agrees that such administrative personnel shall be employed in sufficient numbers to ensure that the System will be operated in a prudent and efficient manner.

**Section 711. Performance of Duties and Covenants.** The City will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the System now or hereafter imposed upon the City by the Constitution and laws of the State and by the provisions of this Ordinance.

**Section 712. Report on System Condition.** The City shall annually cause a qualified employee of the City to make an examination of and report on the condition and operations of the System. At least every five years such examination and report shall be made by the Consulting Engineer. Each such report shall make recommendations as to any changes in operations of the System deemed desirable and shall also make reference to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or

improvements that may be needed in the period prior to the preparation of the next report required by this Section. A copy of each such report shall be filed in the office of the City Clerk and shall be sent to the Authority, the Bond Insurer and the Trustee.

## ARTICLE VIII

### ADDITIONAL INDEBTEDNESS

**Section 801. Senior Obligations.** The City covenants and agrees that for as long as the Agreement remains effective, the City will not issue or incur any Additional Indebtedness payable out of the Revenues of the System or any part thereof which are superior to the City's Agreement Obligations.

**Section 802. Additional Indebtedness.** The City covenants and agrees that so long as the Agreement remains effective, it will not incur any Additional Indebtedness unless the following conditions are met:

(A) The City shall not be in default in the payment of any of the City's Agreement Obligations at the time Outstanding or in making any payment into the Funds and Accounts required by this Ordinance or required by any Additional Indebtedness ordinance (unless such Additional Indebtedness is incurred to cure such default) nor shall any other Event of Default have occurred and be continuing;

(B) The City shall deliver the following:

(1) With respect to *Long-Term Indebtedness*, a certificate signed by the City evidencing *either* of the following:

(a) The Coverage Ratio for the Fiscal Year immediately preceding the issuance of such Additional Indebtedness, as reflected by information provided by the Independent Accountant, shall not be less than 110%, including the Additional Indebtedness proposed to be secured. In the event that the City has instituted any increase in rates for the use and services of the System and such increase shall not have been in effect during the full Fiscal Year immediately preceding the issuance of such proposed Additional Indebtedness, the additional Net Revenues which would have resulted from the operation of the System during said preceding Fiscal Year had such rate increase been in effect for the entire period may be added to the stated Net Revenues for the calculation of the Coverage Ratio, provided that such estimated additional Net Revenues shall be determined by a Consultant; or

(b) The estimated Coverage Ratio (as determined by a Consultant), for the Fiscal Year immediately following the Fiscal Year in which the Additional Indebtedness is to be incurred, shall not be less than

110%, including the Additional Indebtedness proposed to be incurred. In the event that the City anticipates additional Revenues as a result of expansion or modification of the System financed by such Additional Indebtedness, the City may adjust the estimated Net Revenues in determining the Coverage Ratio, by adding any reasonable estimated increase in Net Revenues that will result, or would have resulted from such expansion or modification as determined by the Consultant.

(2) With respect to *Short-Term Indebtedness*, a certificate signed by the City evidencing any *one* of the following:

(a) The principal amount of all Outstanding Short-Term Indebtedness does not exceed 15% of the Revenues for the most recently ended Fiscal Year for which financial information is available from the Independent Accountant;

(b) The Short-Term Indebtedness could be incurred under subparagraph (B)(1) above if it was Long-Term Indebtedness;

(c) A certificate of a Consultant is delivered to the City stating such Consultant's opinion that it is reasonable to assume that the City will be able to refinance the Short-Term Indebtedness before its Stated Maturity in compliance with the provisions of this Section, and the conditions described in subsection (B)(1) are met with respect to the Short-Term Indebtedness if it is assumed that the Short-Term Indebtedness is Long-Term Indebtedness maturing over 20 years (or a shorter period the Consultant determines reasonable) from the date of incurring the Short-Term Indebtedness, bears interest on the unpaid principal balance at the Index Rate, and is payable on a level annual debt service basis over the 20-year period (or shorter period determined reasonable by the Consultant).

(3) With respect to *Interim Indebtedness*, a certificate signed by the City evidencing *either* of the following:

(a) The Interim Indebtedness could be incurred under subsection (B)(1) hereof if it was Long-Term Indebtedness;

(b) A certificate of a Consultant is delivered to the City stating the Consultant's opinion that it is reasonable to assume that the City will be able to refinance such Interim Indebtedness prior to its Stated Maturity in compliance with the provisions of this Section and the conditions described in subsection (B)(1) are met with respect to such Interim Indebtedness if it is assumed that such Interim Indebtedness is Long-Term Indebtedness maturing over 20 years (or a shorter period the Consultant determines reasonable) from the date of incurring the Interim

Indebtedness, bears interest on the unpaid principal balance at the Index Rate, and is payable on a level annual debt service basis over the 20-year period (or shorter period determined reasonable by the Consultant).

(C) When issuance of Additional Indebtedness is permitted by the laws of the State;

(D) The Additional Indebtedness Ordinance shall contain or provide for substantially the same terms, conditions, covenants and procedures as established in this Ordinance.

Notwithstanding the foregoing restrictions, Additional Indebtedness may be issued under this section if it is necessary: (1) in the opinion of the Consulting Engineer to do so to repair the System if damaged or destroyed by disaster to such extent necessary to keep it in good operating condition; or (2) in the opinion of the City's legal counsel to remedy any deficiency of the System with respect to laws of the State or the United States affecting or regulating environmental matters or to comply with the requirements of any governmental agency having jurisdiction over the City with respect to environmental matters.

The City shall make provisions for paying the Additional Indebtedness out of the Revenue Fund and may likewise provide for the creation of reasonable reserve accounts for the payment of such Additional Indebtedness out of moneys in the Revenue Fund.

**Section 803. Additional Agreement Obligations.** Nothing in this Article shall prohibit or restrict the right of the City to amend or permit the amendment of the Agreement to provide for increases in the Water Base Charge or other Agreement Obligations, including those increases resulting from the issuance of Bonds (other than the Series 2007 Bonds) by the Authority for any lawful purpose in connection with the operation of and benefiting the System and to provide that such additional Agreement Obligations shall be payable out of the Revenues of the System.

Prior to incurring any additional Agreement Obligations, the City shall deliver a certificate signed by the City evidencing *either* of the following:

(A) The Coverage Ratio for the Fiscal Year immediately preceding the incurrence of such additional Agreement Obligations, as reflected by information provided by the Independent Accountant, shall be not less than 125%, including the additional Agreement Obligations proposed to be secured. In the event that the City has instituted any increase in rates for the use and services of the System and such increase shall not have been in effect during the full Fiscal Year immediately preceding the issuance of such proposed additional Agreement Obligations, the additional Net Operating Revenues which would have resulted from the operation of the System during the preceding Fiscal Year had such rate increase been effect for the entire period may be added to the stated Net Operating Revenues for the calculation of the Coverage Ratio, provided that such estimated additional Net Operating Revenues shall be determined by a Consultant;

(B) The estimated Coverage Ratio (as determined by a Consultant), for the Fiscal Year immediately following the Fiscal Year in which the additional Agreement Obligations is to be incurred, shall not be less than 125%, including the additional Agreement Obligations proposed to be incurred. In the event that the City anticipates additional Revenues as a result of expansion or modification of the System by such additional Agreement Obligations, the City may adjust the estimated Net Revenues in determining the Coverage Ratio, by adding any reasonable estimated increase in Net Revenues that will result, or would have resulted from such expansion or modification as determined by the Consultant.

Additional Agreement Obligations incurred under the conditions set forth in this Section shall stand on a parity with existing Agreement Obligations and shall enjoy complete equality or lien on and claim against the Revenues of the System, and the City shall make equal provision for paying such additional Agreement Obligations out of the Revenue Fund and may likewise provide for the creation of reasonable reserve accounts for the payment of such additional Agreement Obligations out of moneys in the Revenue Fund.

## ARTICLE IX

### DEFAULT AND REMEDIES

**Section 901. Remedies.** The provisions of this Ordinance, including the covenants and agreements here contained, shall constitute a contract between the City and the Authority. If an Event of Default occurs and shall be continuing, the Authority or the Trustee, on behalf of the Authority, shall have the right:

(A) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of the Authority against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the Constitution and laws of the State;

(B) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority.

The City shall notify the Bond Insurer of any Event of Default under this Ordinance or the Agreement of which it has knowledge or notice.

**Section 902. Remedies Cumulative.** No remedy conferred herein is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other

remedy conferred herein. No waiver of any default or breach of duty or contract shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission to exercise any right or power accruing 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. Every substantive right and every remedy conferred upon the Authority by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. If action or proceedings taken by the Authority on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to the Authority, then, and in every such case the City and the Authority shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Authority shall continue as if no such suit, action or other proceedings had been brought or taken.

**Section 903. No Obligation to Levy Taxes.** Nothing in this Ordinance shall be construed as imposing on the City any duty or obligation to levy any taxes to meet any obligation incurred herein.

## ARTICLE X

### DEFEASANCE

**Section 1001. Defeasance of Water Base Charge.** When the Water Base Charge payable by the City has been paid and discharged, then the requirements contained in this Ordinance and the pledge of the Revenues hereunder and all other rights granted hereby shall terminate with respect to the payment of Water Base Charges under the Agreement. The Water Base Charges due from the City under the Agreement shall be deemed to have been paid and discharged within the meaning of this Ordinance if there has been deposited with the Trustee, or other commercial bank or trust company located in the State and having full trust powers, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations (as defined in the Indenture) which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of all Water Base Charge amounts due or to become due from the City under the Agreement. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the City, for the purpose of paying and discharging all Water Base Charge amounts due or to become due from the City under the Agreement, shall be and are hereby assigned, transferred and set over to the Trustee or other bank or trust company in trust for the Authority, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Trustee or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Ordinance. The City shall notify the Bond Insurer of any defeasance with respect to the Water Base Charge under this section.

## ARTICLE XI

### TAX COVENANTS

#### **Section 1101. General Covenants.**

(A) The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Code §§ 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2007 Bonds and (2) it will not use or permit the use of any proceeds of the Series 2007 Bonds or any other funds of the City, will not take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Series 2007 Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published ruling and judicial decisions, in order to ensure that the interest on the Series 2007 Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(B) The City covenants and agrees that, to the extent within its control, (1) it will use any proceeds of the Series 2007 Bonds as soon as practicable and with all reasonable dispatch for the purposes for which such proceeds are intended, and (2) it will not invest or directly or indirectly use or permit the use of any proceeds of the Series 2007 Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Series 2007 Bonds to be “arbitrage bonds” within the meaning of Code § 148(a).

(C) The City covenants and agrees that it will not use any portion of the proceeds of the Series 2007 Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Series 2007 Bonds to be a “private activity bond within the meaning of Code § 141(a), or to make or finance a loan to any Person other than the State or a political subdivision thereof.

## ARTICLE XII

### CONTINUING DISCLOSURE REQUIREMENTS

**Section 1201. Continuing Disclosure Requirements.** The City hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Continuing Disclosure Undertaking for the Series 2007 Bonds in substantially the form shown as Appendix B to the Official Statement. The Continuing Disclosure Undertaking is authorized and approved and the Mayor and City Clerk are authorized and directed to execute it on behalf of the City.

## ARTICLE XIII

### PROVISIONS RELATING TO THE BOND INSURANCE POLICY

**Section 1301. Consent of Bond Insurer.** Any provision of this Ordinance expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner that affects the rights of the Bond Insurer without the prior written consent of the Bond Insurer.

During the time that any Agreement Obligations of the City remain outstanding with respect to Series 2007 Bonds insured by the Bond Insurer, any reorganization or liquidation plan with respect to the City must be acceptable to the Bond Insurer; provided there is no default by the Bond Insurer under the Bond Insurance Policy for the Series 2007 Bonds. In the event of any reorganization or liquidation with respect to the City, the Bond Insurer shall have the right to vote on behalf of all Bond Owner's holding Series 2007 Bonds guaranteed by the Bond Insurance Policy to the extent such Bond Owner's shall have a vote, absent a default by the Bond Insurer under the Bond Insurance Policy for the Series 2007 Bonds.

**Section 1302. Notices and Other Information to Bond Insurer.** Any notice required to be given to nationally recognized municipal securities information repositories or state information depositories under Rule 15c2-12(b)(5) of the Securities and Exchange Commission or to the Trustee or the Authority under this Ordinance or the Agreement shall also be provided to the Bond Insurer, simultaneously with the sending of such notices as provided herein. All information required to be furnished by the City pursuant to the City's Continuing Disclosure Undertaking with respect to the Series 2007 Bonds shall also be provided to the Bond Insurer, simultaneously with the furnishing of such information as required by the undertaking. All notices shall be in writing and shall be sent by registered or certified mail to the Notice Address of the Bond Insurer provided in this Ordinance.

The Bond Insurer shall have the right to request such additional information as it may reasonably request.

The City will permit the Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Bond Insurer may reasonably request regarding security for the Series 2007 Bonds with appropriate officers of the City, and will use best efforts to enable the Bond Insurer access to the facilities, books and records of the City on any Business Day upon reasonable prior notice.

**Section 1303. Reimbursement.** If not paid by the Authority under the Indenture, the City hereby agrees, as permitted by law and this Ordinance, to pay or reimburse the Bond Insurer, according to the City's proportion of the Agreement Obligations (1) for all amounts paid by Bond Insurer under the terms of the Bond Insurance Policy, and (2) any and all charges, fees, costs and expenses which Bond Insurer may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the Bond Insurance Policy, (ii) the administration, enforcement, defense or preservation of any rights in respect of the Indenture, this Ordinance or any other financing document including defending,

monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the Authority or any affiliate thereof) relating to the Indenture, the Security Documents or any other financing document, any party to the Indenture, the Security Documents or any other financing document or the transaction contemplated by such financing documents, (iii) the foreclosure against, sale or other disposition of any collateral securing any Series 2007 Bonds under the Indenture or any other financing document, or the pursuit of any remedies under the Indenture, this Ordinance or any other financing document, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, or (iv) any amendment, waiver or other action with respect to, or related to, this Ordinance, the Indenture or any other financing document whether or not executed or completed; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the Bond Insurer spent in connection with the actions described in clauses (ii) - (iv) above. In addition, the Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Indenture, this Ordinance or any other financing document. The City will pay interest on the amounts owed in this paragraph from the date of any payment due or paid, at the per annum rate of interest publicly announced from time to time by JP Morgan Chase Bank, National Association at its principal office in New York, New York as its prime lending rate (any change in such prime rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank, National Association) plus three percent (3%) per annum (the "Reimbursement Rate"). The Reimbursement Rate shall be calculated on the basis of the actual number of days elapsed over a 360-day year. In the event JPMorgan Chase Bank ceases to announce its prime rate publicly, the prime rate shall be the publicly announced prime rate or base lending rate of such national bank, as the Bond Insurer shall specify.

In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the City agrees, as permitted by law, to pay or reimburse the Bond Insurer any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the Bond Insurer or its officers, directors, shareholders, employees, agents and each Person, if any, who controls the Bond Insurer within the meaning of either Section 15 of the Securities Act of 1933 or Section 20 of the Securities Exchange Act of 1934 may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to the transactions contemplated by this Ordinance, the Indenture or any other financing document by reason of:

1. Any omission or action (other than of or by the Bond Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the Series 2007 Bonds;
2. The negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the City in connection with any transaction arising from or relating to this Ordinance, the Indenture or any other financing document;

3. The violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it;

4. The breach by the City of any representation, warranty or covenant under this Ordinance or any other financing document or the occurrence, in respect of the City, under this Ordinance or any other financing document of any "event of default" or any event which, with the giving of notice or lapse of time or both, would constitute any "event of default"; or

5. Any untrue statement or alleged untrue statement of a material fact relating to the City contained in any official statement, if any, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an official statement, if any, and furnished by the Bond Insurer in writing expressly for use therein.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

**Section 1401. Amendments.** The rights and duties of the City and the terms and provisions of this Ordinance, may be amended or modified at any time in any respect by ordinance of the City with the prior written consent of the Authority, the Bond Insurer and the Trustee, such consent to be evidenced by an instrument or instruments executed by the Bond Insurer and the Authority and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, provided that, no such modification or alteration shall:

(A) alter the requirements for the written consent to any modification or alteration of the provisions of this Ordinance; or

(B) permit the creation of a lien on the Revenues of the System prior to the lien of the Agreement Obligations.

With notice to the Bond Insurer and without notice to or consent of any other entity, the City may amend or supplement this Ordinance for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer any additional rights, remedies, powers or authority that may lawfully be granted to or conferred, to conform this Ordinance to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Authority.

Every amendment or modification of the provisions of this Ordinance, to which the written consent of the Bond Insurer, the Authority and Trustee is given, as above provided, shall be expressed in an ordinance adopted by the governing body of the City amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this

Ordinance. A certified copy of every such amendatory or supplemental ordinance, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the Clerk, shall be delivered to the Bond Insurer and shall be made available for inspection by the Authority and Trustee or a prospective purchaser or owner of any Series 2007 Bond.

Any and all modifications made in the manner here provided shall not become effective until there has been filed with the Clerk a copy of the amending or supplemental ordinance of the City, duly certified, as well as proof of any required consent to such modification by the Authority, Trustee, and the Bond Insurer.

**Section 1402. Nature of Notices, Consents and Other Instruments.** Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Authority, Trustee or Bond Insurer may be in any number of concurrent writings of similar tenor and may be signed or executed by such entity in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted under any such instrument, if made in the following manner: the fact and date of the execution by any Person of any such instrument is proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

**Section 1403. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Ordinance shall be in writing, given to the Notice Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Authority, Trustee and the Bond Insurer. The City, the Authority and the Bond Insurer may from time to time designate, by giving notice to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Authority shall constitute a sufficient notice.

**Section 1404. Inconsistent Provisions.** In case any one or more of the provisions of this Ordinance shall for any reason be inconsistent with the provisions of any ordinance or resolution authorizing any Additional Indebtedness, the provisions of this Ordinance shall prevail so long as any Agreement Obligations are Outstanding.

**Section 1405. Further Authority.** The officers and officials of the City, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes

of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 1406. Severability.** If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

**Section 1407. Governing Law.** This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1408. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City.

PASSED AND APPROVED by the governing body of the City of Paola, Kansas on August 14, 2007.

CITY OF PAOLA, KANSAS

[seal]

By \_\_\_\_\_  
Artie Stuteville, Mayor

ATTEST:

By \_\_\_\_\_  
Daniel G. Droste, City Clerk

CERTIFICATE

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. \_\_\_\_ (the "Ordinance") of the City of Paola, Kansas, passed by the governing body on August 14, 2007 as the same appears of record in my office, and that this Ordinance has not been modified, amended or repealed and is in full force and effect as of this date.

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

EXCERPT OF MINUTES

The governing body of the City of Paola, Kansas, met in regular session at the usual meeting place in the City on August 14, 2007, at 5:30 p.m., with Mayor Stuteville presiding and the following members present: Jim Pritchard, Johna Dial, Jack Rowlett, and Michael Hamilton, and the following members of the governing body were absent: None.

Among other business, there came on for consideration and discussion the following:

AN ORDINANCE AUTHORIZING EXECUTION OF A WATER SUPPLY SERVICE AGREEMENT WITH THE MARAIS DES CYGNES PUBLIC UTILITY AUTHORITY; MAKING COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY OF OBLIGATIONS OF THE CITY IN THE AGREEMENT; AND AUTHORIZING NECESSARY DOCUMENTS AND ACTIONS RELATING TO THE AGREEMENT.

After discussion, upon motion by Johna Dial, seconded by Jim Pritchard, each section of the Ordinance was passed by a majority of the members of the governing body.

A majority of the members having voted in favor of the passage of said Ordinance, it was designated Ordinance No. 2949 and was ordered to be executed by the Mayor and by the City Clerk, and the City Clerk was directed to publish the Ordinance one time in the official city newspaper as required by laws and provided therein.

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CITY CLERK'S  
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the August 14, 2007, meeting of the governing body of the City of Paola, Kansas.

[seal]

\_\_\_\_\_  
Daniel G. Droste, City Clerk