ORDINANCE NO. 20-18

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF $13,335,000 PRINCIPAL AMOUNT OF WATER AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2020, OF THE CITY OF OLATHE, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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

WHEREAS, the City is authorized under the provisions of the Act (as herein defined), to issue and sell revenue bonds for the purpose of paying all or part of the cost of making alterations, repairs, extensions, enlargements and improvements to the System (as herein defined), provided that the principal of and interest on such revenue bonds shall be payable solely from the Net Revenues (as herein defined) derived by the City from the operation of the System; and

WHEREAS, the City has pursuant to Resolution No. 19-1013 declared its intention under the Act to repair, alter, extend, reconstruct, enlarge or improve the System as described in Section 1 thereof (the “Project”) at an estimated cost of $32,000,000 and to issue water and sewer system revenue bonds in an amount not to exceed $32,000,000; notice of such intention was published one time in the official City newspaper and no sufficient written protest thereto was filed with the City Clerk within 15 days after said publication date as set forth in the Act; and

WHEREAS, $4,787,026.76 of the revenue bonds authorized by Resolution No. 19-1013 have been issued and the City proposes to issue $4,115,000 of water and sewer system revenue bonds so authorized to pay the costs of the Project and related bond reserves and financing costs; and

WHEREAS, the governing body of the City has caused plans and specifications for the Project and an estimate of the costs thereof to be made and the same are hereby accepted and approved and shall be placed on file in the office of the City Clerk; and

WHEREAS, the City previously issued and has Outstanding the Refunded Bonds (as defined herein) and is authorized by K.S.A. 10-116a to issue refunding revenue bonds of the City for the purpose of refunding the Refunded Bonds; and

WHEREAS, in order to achieve interest cost savings through early redemption of the Refunded Bonds and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and the System to refund the Refunded Bonds; and

WHEREAS, the City has no bonds or other obligations outstanding payable from the Net Revenues of the System, except the following:

<table>
<thead>
<tr>
<th>Series of Bonds</th>
<th>Dated</th>
<th>Amount Issued</th>
<th>Amount Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable Water and Sewer System Revenue Bonds,</td>
<td>February 23, 2010</td>
<td>$6,540,000</td>
<td>*$-0-</td>
</tr>
<tr>
<td>Series 2010-A (Build America Bonds – Direct Pay)</td>
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</table>
Tatable Water and Sewer System Revenue Bonds, Series 2010-B (Build America Bonds – Direct Pay)  
May 27, 2010  $8,050,000  $0

Taxable Water and Sewer System Revenue Bonds, Series 2010-C (Build America Bonds – Direct Pay)  
December 28, 2010  $36,280,000  $27,465,000

Water and Sewer System Revenue Bonds, Series 2012  
December 18, 2012  $9,585,000  $6,605,000

Water and Sewer System Revenue Bonds, Series 2015  
October 1, 2015  $18,895,000  $16,005,000

Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2017  
April 4, 2017  $11,340,000  $10,280,000

Water and Sewer System Revenue Bonds, Series 2018  
April 3, 2018  $11,580,000  $11,205,000

Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2019  
April 18, 2019  $16,360,000  $16,235,000

* All Outstanding Series 2010-A Bonds and Series 2010-B Bonds will be defeased and no longer payable from the Net Revenues of the System upon issuance of the Series 2020 Bonds.

WHEREAS, the resolutions authorizing the Series 2010-C Bonds, the Series 2012 Bonds, the Series 2015 Bonds, the Series 2017 Bonds, the Series 2018 Bonds, and the Series 2019 Bonds provide that the City may issue additional bonds payable from Net Revenues on a parity with such bonds upon the satisfaction of certain conditions; and

WHEREAS, prior to or simultaneously with the issuance of the Series 2020 Bonds, such conditions will be satisfied; and

WHEREAS, the City hereby finds and determines that it is necessary to authorize the issuance of the City’s Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, in the principal amount of $13,335,000 (the “Series 2020 Bonds”) for the purposes set forth herein.

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

Section 1. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Ordinance and in the Resolution, the following words and terms as used in this Ordinance shall have the following meanings:

“Additional Bonds” means any bonds secured by the Net Revenues of the System hereinafter issued pursuant to Article X of the Resolution.

“BAB Interest Subsidy Payments” means payments to be received by the City from the U.S. Department of the Treasury under Code §§ 54AA(g) and 6431 in connection with the payments of interest on the Bonds.

“Bonds” means the Series 2020 Bonds.

“City” means the City of Olathe, Kansas.

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

“Code” means the Internal Revenue Code of 1986, as amended, together with any regulations applicable thereto or promulgated thereunder by the United States Department of the Treasury.

“Current Expenses” means all necessary expenses of operation, maintenance and repair of the System, including, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance, and all other expenses incident to the operation of the System, but shall exclude depreciation and amortization charges, interest paid on revenue bonds of the System, all general administrative expenses of the City not related to the operation of the System, and the payments into the Bond Reserve Account provided for in the Resolution.

“Gross Revenues” means all charges, fees, income and revenues (including interest and investment earnings) derived and collected by the City from the operation and ownership of the System including without limitation the System Development Charge collected pursuant to Section 13.26 of the Municipal Code of the City, as amended, and any rate, fee or charge that succeeds to the System Development Charge, and any amounts deposited in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay debt service on revenue bonds of the System, BAB Interest Subsidy Payments and net proceeds of any business interruption insurance, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

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

“Net Revenues” means Gross Revenues less Current Expenses.

“Ordinance” means this ordinance as from time to time amended in accordance with the terms hereof.

“Original Purchaser” means Commerce Bank, Kansas City, Missouri.

“Parity Bonds” means the Bonds, the Series 2010-C Bonds, the Series 2012 Bonds, the Series 2015 Bonds, the Series 2017 Bonds, the Series 2018 Bonds, the Series 2019 Bonds and any bonds hereinafter issued pursuant to Sections 1002 or 1004 of the Resolution and standing on a parity and equality with the Bonds with respect to the payment of principal and interest out of the Net Revenues of the System.
“Project” means the acquisition, construction, reconstruction, alterations, repair, improvements, extensions, or enlargements of the System described in Resolution No. 19-1013 of the City.

“Refunded Bonds” means, collectively, (a) the Series 2010-A Bonds maturing in the years 2020 to 2030, inclusive, in the aggregate principal amount of $3,830,000, and (b) the Series 2010-B Bonds maturing in the years 2020 to 2035, inclusive, in the aggregate principal amount of $5,850,000.

“Resolution” means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Bonds and making covenants with respect thereto.


“Series 2020 Bonds” means the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, authorized by this Ordinance.

“Substitute Project” means a substitute or additional project of the System authorized in the manner set forth in the Parity Bond Resolution.

“System” means the entire waterworks plant and system and sewerage plant and system owned and operated by the City for the production, storage, treatment and distribution of water and for the collection, treatment and disposal of sewage together with all alterations, repairs, extensions, enlargements and improvements thereto hereafter made or acquired by the City.
Section 2. Authorization of the Bonds. There shall be issued and are hereby authorized and directed to be issued the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, of the City in the principal amount of $13,335,000 for the purpose of providing funds to (i) pay a portion of the costs of the Project, (ii) refund the Refunded Bonds, (iii) fund a debt service reserve fund, and (iv) pay Costs of Issuance of the Bonds.

Section 3. Security for the Bonds. The Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues. The taxing power of the City is not pledged to the payment of the Bonds, either as to principal or interest. The Bonds 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.

The covenants and agreements of the City contained herein and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues and in all other respects with any Parity Bonds. The Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over any Parity Bonds and any Parity Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Bonds.

Section 4. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Resolution hereinafter adopted by the governing body of the City. The provisions, covenants and agreements set forth in the Resolution are incorporated herein and are deemed a part of this Ordinance as if the Resolution was set out herein in its entirety.

Section 5. Rate Covenant. The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all alterations, repairs, extensions, enlargements and improvements thereto hereafter constructed or acquired by the City, as will produce revenues sufficient to (a) pay the cost of the operation and maintenance of the System; (b) pay the principal of and interest on the Bonds and any Parity Bonds as and when the same become due; (c) enable the City to have in each fiscal year Net Revenues in an amount that will be not less than 110% of the Debt Service Requirements required to be paid by the City in such fiscal year; and (d) provide reasonable and adequate reserves for the payment of the Bonds and the Parity Bonds and the interest thereon and for the protection and benefit of the System of the City as provided in this Ordinance and the Resolution.

Section 6. Further Authority. The Mayor, Director of Resource Management, Treasurer, City Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, including the making of 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 7. Governing Law. The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication (or a summary thereof) in the official newspaper of the City.

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PASSED by the governing body of the City on May 19, 2020 and APPROVED AND SIGNED by the Mayor.

(SEAL)

(Seal)

Mayor

ATTEST:

City Clerk

(Signature Page to Bond Ordinance)