

Chapter 3.08

ISSUANCE AND SALE OF REVENUE BONDS

Sections:

- 3.08.010 Findings and Authorization
- 3.08.020 Bonds
- 3.08.030 Water System Fund
- 3.08.040 Priorities and Additional Bonds
- 3.08.050 Covenants
- 3.08.060 Repeals and Effective Date
- 3.08.070 Defeasance
- 3.08.080 Repeals and Effective Date

3.08.010 Findings and Authorization.

1.01 It is found, determined and declared that the City of Harlowton has been and is now duly authorized by the provisions of Title 11, Chapter 24, Revised Codes of Montana 1947, as amended, and by a resolution adopted by the city council on September 4, 1975, to issue revenue bonds in the aggregate principal amount of \$60,000 for the purpose of paying the cost of improving its municipal water system; to prescribe and collect just and equitable rates, charges and rentals for connections with the system and for services, facilities and commodities directly or indirectly furnished thereby; and to pledge and appropriate to the payment of the bonds the net revenues to be derived from the operation of the water system, including improvements, betterments or extensions thereof hereafter constructed or acquired; that such rates, charges and rentals will be sufficient during the useful life of said improvements and the term of the bonds herein authorized to produce net revenues more than adequate to pay the principal and interest coming due on the bonds herein authorized, and to create and maintain reasonable reserves therefore as herein prescribed, and that there are no bonds outstanding which are payable from or constitute a lien against the net revenues of the water system.

1.02 The proceeds of the revenue bonds will be used to finance the construction, acquisition and installation of a new well, pump, pumphouse, chlorinator, connecting pipe and estimated to be \$78,200. Of this cost \$60,000 will be paid from the proceeds of the revenue bonds herein authorized to be issued.

1.03 The city offered for sale and sold to Dain, Kalman & Quail Incorporated, of Minneapolis, Minnesota, general obligation Water System Revenue Bonds of terms and conditions approved by resolution of the council adopted September 4, 1975, and upon the further terms and conditions of this ordinance. The city shall proceed to issue and deliver the bonds as herein provided.

3.08.020 Bonds.

2.01 The Water System Revenue Bonds, in the aggregate principal amount of \$60,000 shall be dated as of November 1, 1975, shall be 60 in number and numbered from 1 through 60, in the denomination of \$1,000 each and shall mature in order of serial numbers on November 1, in the years and amounts set forth below:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1976	\$4,000	1981	\$6,000
1977	5,000	1982	7,000
1978	5,000	1983	7,000
1979	5,000	1984	7,000
1980	6,000	1985	8,000

Each of the bonds shall bear interest at the rate of six and seventy-five hundredths per cent (6.75%) per annum from November 1, 1975 until paid or duly called for redemption. Interest shall be payable on each May 1, and November 1, commencing May 1, 1976. Bonds of the issue maturing in the years 1976 through 1982, shall be payable on their respective state maturity dates without option of prior payment but those having stated maturity dates in the years 1983 through 1985, shall each be subject to redemption and prepayment at the option of the city on November 1, 1982, and any interest payment date thereafter, at 101% of par plus accrued interest to the date fixed for redemption thereof, and in inverse order of their serial numbers; provided, that not less than 30 days before the date specified for redemption of any bond, notice of the call thereof shall be mailed by the city treasurer, by registered mail to the holder if known, and to the bank at which principal and interest are then payable, and shall also be published in one issue of a newspaper at Harlowton, Montana, and in one issue of a newspaper published in Billings, Montana. The city treasurer is directed to maintain a record of the names and addresses of the holders of prepayable bonds of the issue, so far as such information is made available to him, for the purpose of mailing such notices. The principal of and interest on the bonds shall be payable at the main office of the Northwestern National Bank of Minneapolis in Minneapolis, Minnesota, in any coin or currency of the United States of America which on the respective dates of payment is legal tender for public and private debts.

The bonds and the interest coupons appurtenant thereto shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF WHEATLAND
CITY OF HARLOWTON

WATER SYSTEM REVENUE BOND

No.

\$1,000

KNOW ALL MEN BY THESE PRESENT, that the City of Harlowton, a duly organized municipal corporation of Wheatland County, Montana, for value received promises to pay to bearer, solely from the Revenue Bond Account of its water system fund, the sum of one thousand dollars (1,000), on the 1st day of November, 19___, or if this bond is prepayable as stated below, on a date prior thereto on which it shall have been duly called for redemption, and to pay interest on said principal sum from said account from the date hereof, until the principal sum is paid or if this bond is prepayable, until it has been duly called for redemption at the rate of six and seventy-five hundredths per cent (6.75%) per annum, payable semiannually on May 1, and November 1, in each year, commencing May 1, 1976, interest to maturity being represented by and payable in accordance with and upon presentation and surrender of the interest coupons appurtenant hereto. Both principal and interest are payable at the main office of the Northwestern National Bank of Minneapolis in Minneapolis, Minnesota, in any coin or currency of the United States of America which on the respective dates of payment is legal tender for public and private debts.

This bond is one of an issue in the principal amount of \$60,000, all of like date and tenor except as to serial number, interest rate, maturity date and redemption privilege, issued for the purpose of providing money to finance the improvement of the municipal water system, and pursuant to and in full conformity with the constitution and laws of the State of Montana and the ordinances of said city thereunto enabling, including Title 11, Chapter 24, Revised Codes of Montana 1947, as amended, and ordinance no. 3.08 of the city, duly enacted on November 6, 1975.

Bonds of this issue maturing in the years 1976 through 1982, are payable on their respective stated maturity dates without option of prior payment, but those maturing in the years 1983 through 1985, are each subject to redemption and prepayment at the option of the city, at 101% of par plus accrued interest, and in inverse order of their serial number on November 1, 1982 and on any interest payment date thereafter. Not less than thirty (30) days in advance of the date fixed for prepayment and redemption of any bond, the city will mail notice of the call thereof to the holder if known, and to the bank at which principal and interest are then payable and will cause such notice to be published in a Harlowton, Montana newspaper and in a daily newspaper published in Billings, Montana. Holders of prepayable bonds of this issue may register their names and addresses, and the serial numbers of their bonds with the city treasurer for the purpose of receiving such mailed notice.

IT IS CERTIFIED, RECITED, COVENANTED AND AGREED, that the city has duly authorized and will forthwith construct and complete the improvements to the municipal water system, as fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the municipal water system in accordance with regulations of the Montana Public Service Commission, and has created a special water system fund into which the gross revenues of the system, including all additions thereto and replacements and improvements thereof, will be paid and a separate and special Revenue Bond Account in that fund, into which will be paid each month, from and as a first and prior lien on the net revenues of the system then on hand an amount equal to not less than the sum of one-sixth of the interest due within the next six months and one-twelfth of the principal due within the next twelve months with respect to all outstanding bonds payable from that account, and into which shall be paid additional net revenues sufficient to accumulate and maintain a reserve equal to the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; that additional bonds and re-funding bonds may be issued and made payable from the Revenue Bond Account on a parity with bonds of this issue, upon certain conditions set forth in ordinance no. 3.08, but no obligation shall also constitute a general obligation and indebtedness of the city, unless the lien thereof shall be expressly made subordinate to the lien of the bonds of this issue on such net revenues that all provisions for the security of the holder of this bond set forth in ordinance no. 3.08, will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by constitution and laws of the State of Montana and the ordinances and resolutions of the city to be done, to exist, to happen and to be performed in order to make this bond a valid and binding special obligation of the city according to its terms have been done, do exist, have happened and have been performed as required; and that this bond and the interest thereon do not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision and the issuance of this bond does not cause either the general or the special indebtedness of the city to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF the City of Harlowton, Wheatland County, Montana by its city council has caused this bond and the certificate on the reverse side thereof and the coupons appurtenant hereto, to be executed in its behalf by the signature of the mayor and countersigned by the city clerk-treasurer, and its corporate seal to be affixed hereto, both such signatures and the seal being authentic facsimiles authorized by the officer on the face of this bond, and has caused this bond to be dated as of November 1, 1975.

(facsimilie Seal)

/s/ Oscar Biegel
Mayor

/s/ Sheila C. Austin
City Clerk-Treasurer

(Form of Coupon)

No.

\$

On the last day of May, (November) 19__, unless the bond described below is subject to and has been called for earlier redemption, the City of Harlowton, Wheatland County, Montana, will pay to bearer at the main office of the Northwestern National Bank of Minneapolis in Minneapolis, Minnesota, from the Revenue Bond Account in its Water System Fund, the amount shown hereon in lawful money of the United States of America for interest then due on its water system Revenue Bond, dated November 1, 1975, No. ____.

(Facsimile Signature)
City Clerk-Treasurer

(Facsimile Signature)
Mayor

(Form of certificate to be printed on the reverse side of each bond, following a full copy of the legal opinion on the issue)

We certify that the above is a full, true and correct copy of the legal opinion rendered by bond counsel on the issue of bonds of the City of Harlowton, Wheatland County, Montana, which includes the within bond, dates as of the date of delivery of and payment for the bonds.

(Facsimile Signature)
City Clerk-Treasurer

(Facsimile Signature)
Mayor

The bonds shall be prepared for execution under the direction of the city clerk-treasurer, and shall be executed on behalf of the city by the signature of the mayor and counter signed by the city clerk-treasurer; provided that the signature of one of such officers shall be a printed facsimile. The interest coupons appurtenant to the bonds shall be executed and authenticated by the printed facsimile signatures of such officers, and on the reverse side of each bond shall be printed a copy of the legal opinion to be rendered by bond counsel, authenticated by the certificate and facsimile signatures of such officers. The bonds shall be sealed with a printed facsimile of the corporate seal of the city. After registering the bonds in the manner specified in Section 11-2318, Revised Codes of Montana 1947, the

city clerk-treasurer shall cause them to be delivered to the purchasers thereof upon payment of the purchase price as specified in the contract of sale, and the purchasers shall not be obligated to see to the application of the purchase price.

3.08.030 Water System Fund.

3.01 The Water System Fund of the city shall be maintained as a separate and special bookkeeping account in its financial records until all bonds issued hereunder and interest and redemption premiums due thereon have been fully paid, or the city's obligation with reference to all bonds has been discharged as provided in this ordinance. All proceeds of bonds issued hereunder, all gross revenues derived from the operation of the water system, are irrevocably pledged and appropriated and shall be credited to the fund as received. Such gross revenues include all income and receipts from rates, fees, charges and rentals imposed for connections with and for the availability, benefit and use of the system as now constituted and of all replacements and improvements thereof and from penalties and interest thereon, and from any sales of property acquired for the system and all income received from the investments of such revenues; but not any special assessments or taxes levied for construction of any part of the system. The funds shall be subdivided into separate accounts as designated and described in those sections. The revenues received in the fund shall be apportioned monthly to the respective accounts, commencing November 1, 1975.

3.02 Construction Account. The Construction Account shall be used only to pay as incurred and allowed costs under which accepted accounting practice are capital costs of the improvements described in section 010, and of such reconstructions, improvements, betterments or extensions of the water system as may be authorized in accordance with law; including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accruing on bonds issued hereunder during the period of construction of facilities financed thereby and for six months thereafter, if and to the extent that the Revenue Bond Account is not sufficient for payment of such interest, reimbursement of any advances made for other city funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Account shall be credited as received all proceeds of bond issued hereunder, except amounts appropriated to the Revenue Bond Account in section 3.04, and all other funds appropriated by the city for the water system improvement and all income received from the investment of the Construction Account.

3.03 Operating Account. On each monthly apportionment, there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the account to pay the reasonable and necessary operating expenses of the system which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses", shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the water system and its facilities, as calculated in accordance with sound accounting practice, and shall include, without limitation, administrative expenses of the city relating solely to the system, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with sound accounting practices. Such expenses shall not include any allowance for depreciation or renewals or replacements of capital assets, of the system and shall not include any portion of the salaries or wages paid to any officer or employee of the city, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the water system. There shall also be credited to this account forthwith upon the delivery of the initial issue of bonds under this ordinance and from available funds other than bonds proceeds the sum of \$1,000 to establish an operating reserve, which sum shall be maintained by additional transfers upon each monthly apportionment whenever necessary or may be augmented by transfers if determined by the city council to be necessary to meet contingencies arising in the operation and maintenance of the system. Money in the Operating Account shall be used solely for the payment of current operating expenses of the water system as herein defined. The net revenues of the municipal water system, as referred to in this ordinance, are defined to include the entire amount of such gross revenues remaining upon each such monthly apportionment, after crediting to the Operating Account the amount required thereby, including sums required to maintain the operating reserve in the minimum amount herein stated.

3.04 Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account out of the net revenues, an amount equal to not less than the sum of one-sixth of the interest due within the next six months plus one-twelfth of the principal to become due within the next twelve months with respect to all outstanding bonds payable from the Revenue Bond Account. In addition to each such monthly credit, the city shall credit to the Revenue Bond Account upon each monthly apportionment all net revenues remaining net revenues as may be needed to maintain the reserve, in an amount equal to the maximum amount of principal and interest coming due in any future fiscal year on all of the bonds payable from the account; save and except that the net revenues in excess of the minimum monthly

credits may be appropriated to the Construction Account if and to the extent needed to pay claims due for necessary expenses of construction, in excess of the balance available in that account. Money from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal and interest on bonds payable therefrom as such payments become due, and the reserve therein shall be used only to pay maturing principal and interest when other moneys within the account are insufficient therefore; provided, that on any date when all outstanding bonds of the issue herein authorized are due or prepayable by their terms, if the amount then on hand in the Revenue Bond Account, including the reserve, is sufficient with any other moneys available for the purpose, to pay all such bonds and the interest accrued thereon in full, it may be used for the purpose; and provided further that so long as the amount of the reserve is not less than the amount herein required to be maintained, the city may credit earnings on investment of the reserve to the Replacement and Depreciation Account. If any payment of principal or interest becomes due when money in the Revenue Bond Account is temporarily insufficient therefore, such payment shall be advanced out of any net revenues theretofore segregated and then on hand in the Replacement and Depreciation Account or the Surplus Account.

3.05 Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account such portion of the net revenues of the system, in excess of the current requirements of the Revenue Bond Account, including the bond reserve therein (which portion of the net revenues is referred to herein as "surplus net revenues"), such amount as the city council shall determine to be required for the accumulation of a reasonable allowance for depreciation of the system and for replacement or renewal of worn out, obsolete or damaged properties and equipment thereof. Money in this account shall be used only for the purposes above stated or, if so directed by the council, to redeem revenue bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in section 3.04 thereof, or to pay the cost of improvements to the system; provided, that in the event that the city shall hereafter issue bonds for the purpose of financing the construction and installation of additional improvements or additions to the water system, other than bonds payable from the Revenue Bond Account, surplus net revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the payment of such bonds and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

3.06 Surplus Account. Any amount of the surplus net revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account, and the money from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in section 3.04 hereof, may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay bonds payable from the net revenues when and as such bonds become prepayable according to their terms; or
- (b) to purchase such bonds on the open market, whether or not the bonds or other such bonds may then be prepayable according to their terms; or
- (c) to be held as a reserve for redemption and prepayment of bonds payable from the net revenues which are not then but will later be prepayable according to their terms; or
- (d) to pay for repairs of or for the construction and installation of improvements or additions to the water system; or
- (e) to restore the operating reserve or increase the same when determined to be necessary by the city council.

No money shall at any time be transferred from the Surplus Account or any other account of the Water System Fund to any other fund of the city, nor shall such money at any time be loaned to other municipal funds or invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in section 3.07.

3.07 Deposit and Investment of Funds. The city treasurer shall cause all money pertaining to the Water System Fund to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of section 16-2618 of the Revised Codes of Montana 1947, as amended, in a deposit account or accounts which shall be maintained separate and apart from all other bank accounts of the City of Harlowton, so long as any of the bonds issued hereunder and the interest thereon shall remain unpaid; and the balance in such accounts, except such portion thereof as shall be guaranteed by federal deposit insurance, shall at all times be secured to its full amount by bonds or securities of the types set forth in section 16-2618. Any of such money not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Water System Fund as defined and authorized in this ordinance; except that money from time to time on hand in this fund may at any time, in the discretion of the city council, be invested in securities which are direct, general obligations of the United States of America maturing and bearing interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided, that the reserve in the Revenue Bond Account, the Replacement and Depreciation Account and the Surplus Account, may be invested



in said securities maturing no later than five years from the date of the investment; and provided further, that money pertaining to the Surplus Account of the Water System Fund may, in the discretion of the council, be invested in any securities which are direct, general obligations of the City of Harlowton. Income received from the deposit or investment of money in said accounts shall be credited to the account from whose money the deposit was made or the investment was purchased and handled and accounted for in the same manner as other money in that account.

3.08.040 Priorities and Additional Bonds.

4.01 Priority of Bond Payments. Each and all of the bonds herein authorized shall be equally and ratably secured by and payable out of the net revenues of the municipal water system without preference or priority of any bond over any other; provided that if at any time the net revenues on hand in the Water System Fund as defined in section 3.04 hereof, are insufficient to pay principal and interest due on all such bonds, the money on hand shall be first used to pay the interest accrued on all outstanding bonds, and the balance shall be applied toward payment of the maturing principal of such bonds in order of their maturities, and the earliest maturing bonds to be paid first and prorata in payment of bonds maturing on the same date.

4.02 Refunding Revenue Bonds. The city reserves the right and privilege of refunding any or all of the bonds herein authorized and referred to, but only subject to the following terms and conditions:

(a) Any matured bonds may be refunded if money available for the payment thereof at maturity within the limitation prescribed in section 4.01 hereof, should at any time be insufficient to make such payment in full.

(b) Any bonds may be refunded prior to maturity as and when they become prepayable according to their terms.

(c) Provision may be made for the payment and refunding of any unmatured bonds by the deposit with a duly qualified depository bank, as escrow agent, of cash sufficient, or of securities of the kinds authorized by law, the agreed payments of interest and principal with respect to which are sufficient to pay the principal amount of such bonds with interest to maturity or to any prior date or dates on which they have been duly called for redemption and any premium required for such redemption.

(d) Any refunding revenue bonds issued for the above purposes may be made payable from the net revenues on a parity as to interest with all then outstanding bonds of the issue herein authorized, provided that (1)- the maturity of each refunding revenue bond shall be subsequent to the last maturity of any then outstanding revenue bonds which are not refunded or to be refunded out of money on deposit with such escrow agent, and (2)- no bondholder shall be required to accept a refunding revenue bond in exchange for any bond owned by him.

4.03 Other Parity Bonds. The city reserves the right to issue additional bonds, payable from the Revenue Bond Account of the Water System Fund on a parity as to both principal and interest with the bonds herein authorized, if the net revenues of the water system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least 130% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the then outstanding bonds, with respect to all such bonds and the additional bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues shall be those shown by the official financial records of the city, except that if the rates and charges for water service have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the net revenues, the actual operation and maintenance which the engineer for the city estimates will be incurred because of the improvement or extension of the water system to be constructed from the proceeds of the additional bonds proposed to be issued. In no event shall any such additional bonds be issued and made payable from the Revenue Bond Account if the city is then in default in any payment of principal or interest on any outstanding bonds payable therefrom, or if there then exists any deficiency in the balances required by this ordinance to be maintained in any of the accounts of the water system fund.

4.04 Subordinate Bonds. Nothing in this ordinance shall preclude the city from issuing additional bonds, which are expressly made a charge on only the surplus net revenues of the system as defined in section 3.05 of this ordinance, subordinate to the pledge of net revenues to the Revenue Bond Account.

3.08.050 Covenants.

5.01 General. The city covenants and agrees with the purchasers and the holder from time to time of all bonds issued under and secured by the provisions of this ordinance that the recitals contained in section 010 hereof, are correct, that until all such bonds are fully paid or the city's liability with reference thereto is fully discharged as provided in this ordinance, it will continue to hold, maintain and operate its municipal water system as a public utility and convenience, free from all liens thereon or on the income therefrom other than the liens herein granted or provided for, and will maintain, expend and account for its Water System Fund and the several account therein as provided in section 030, and will not incur a further lien or charge on the income or revenues of the water system except upon the conditions and in the manner prescribed in section 040, and will perform and cause all other officers and employees of the city to perform and enforce each and all of the additional covenants and agreements set forth in this section 050, and that it will complete the acquisition and equipment of the improvements described in section 1.02 as expeditiously as practical.

5.02 Competing Service. The city will not establish or authorize the establishment of any other system for the public supply of service in competition with any or all of the services supplied by the facilities of the municipal water system.

5.03 Property Insurance. The city will cause all buildings, properties, fixtures and equipment constituting a part of the water system to be kept insured with a reputable insurance carrier or carriers, qualified under the law of Montana, in such amounts as are ordinarily carried, and against loss or damage by fire, explosion and such other hazards and risks as are ordinarily insured against by public utilities owning and operating properties of a similar character and size, provided that if at any time the city is unable to obtain such insurance, it will obtain insurance in such amounts and against such risks as is reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement and reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledges as security for the outstanding bonds issued hereunder. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Water System Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the city shall supply the deficiency from revenues on hand in the Replacement and Depreciation Account and Surplus Account, and may supply it from any other city funds, but is not obligated to the bond holders so to do unless the deficiency results from breach of the covenant in this section 5.03

5.04 Liability Insurance and Surety Bonds. The city will carry insurance against liability of the city and its employees for damage to persons and property resulting from the operation of the system in such amounts as the city determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Water System Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the city. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this section and section 5.03, constitute part of the operating expenses of the system, but no insurable liabilities of the city in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Water System Fund.

5.05 Disposition of Property. The city will not mortgage, lease, sell or otherwise dispose of any real or personal properties of the water system, unless:

- (a) Prior to or simultaneous with such mortgage, lease, sale or other disposition, all of the bonds issued hereunder and then outstanding shall be discharged as provided in section 070; or
- (b) the properties to be mortgaged, leased, sold or otherwise disposed or are unserviceable, inadequate, obsolete or no longer required for use in connection with the system; or
- (c) the mortgage, lease, sale or other disposition will not prevent the city from complying with the provisions of this ordinance; and
- (d) in any event referred to in clauses (b) or (c), all proceeds of the mortgage, lease, sale or other disposition of such properties are deposited into the Water System Fund.

5.06 Books and Records. The city will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements, and other transactions relating to the water system, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this ordinance, in such reasonable detail as may be determined by the city in accordance with generally accepted accounting practices and principles. It will cause such books to be maintained on the basis of a fiscal year commencing July 1, and ending June 30. The city shall, within 120 days after the close of each fiscal year, prepare and supply to the original purchaser or purchasers of bonds issued hereunder and the bank or banks designated as agent for the payment of principal of and interest thereon a financial report with respect to its water system for such fiscal year. The report shall be prepared by the city clerk-treasurer in accordance with applicable generally accepted accounting principles and in addition to whatever matters may be thought proper by the city clerk-treasurer to be included therein, shall include the following:

- (a) A statement in detail of the income and expenditures of the water system for the fiscal year, identifying capital expenditures and separating them from operating expenditures;
- (b) a balance sheet as of the end of the fiscal year;
- (c) the number of premises connected to the water system at the end of the fiscal year;
- (d) the amount on hand in each account of the Water System Fund at the end of the fiscal year;
- (e) a list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bonds; and
- (f) a determination that the report shows full compliance by the city with the provisions of this ordinance during the year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Revenue Bond Account, and receipt of net revenues during each fiscal year at least equal to 130% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; or, if the report should reveal that the revenues have been insufficient for compliance with this ordinance, or that the methods used in accounting for such revenues were contrary to any provision of this ordinance, the report of audit shall include a full explanation thereof, together with the treasurer's recommendation for such change in rates or accounting practices or in the operation of the system as may be required.

5.07 Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billing and collection of the water rates, charges and rentals shall be payable from the Operating Account.

5.08 Handling of Funds. The employees of the city, under the direction and control of the city clerk-treasurer shall keep books of account, issue statements and collect bills for the rates, charges and rentals for the services and facilities provided by the municipal water system and for other money currently receivable on account of that system, and shall, to the extent required by section 5.10, provide for the discontinuance of service in case of non-payment for services or non-compliance with regulations. All money collected with respect to the system shall be deposited daily with the city clerk-treasurer. The clerk-treasurer shall be bonded at all times with a surety company authorized to do business in Montana, in the amount of at least \$5,000 to assure the faithful carrying out of such duties. Any failure on the part of the clerk-treasurer to comply and to enforce compliance on the part of all officers and employees concerned with the provisions of this ordinance, and within the city's other regulations respecting the water system, shall constitute malfeasance for which the clerk-treasurer and the surety on his bond shall be personally liable. In the event of default on the part of the city in the payment of principal of or interest on any bond promptly as each falls so, or in

the keeping of any covenants herein contained, and if such default shall continue for a period of sixty days the council will appoint a special superintendent for the system, with the power and responsibility to operate the system for the City of Harlowton, and to recommend to the council such revisions of the rates and charges and operating policies as may be necessary to comply with this ordinance, and to assure that the net revenues will be sufficient to pay all bond principal and interest, and he shall in all things so operate the system as to fully comply with all the requirements and provisions of this ordinance.

5.09 Rules and Regulations. The rules and regulations for operation of the water system and the use of water service from the system shall be as provided in the existing ordinances of the city, and any ordinances subsequently adopted amendatory thereof or supplemental thereto.

5.10 Billings. The charges for water services will be billed at least monthly, and if the bill is not paid within sixty days of the date of billing, or if the customer fails to comply with all rules and regulations established for the water system within sixty days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the water service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for water service and compliance with all such rules and regulations. The city shall take appropriate legal action to collect the unpaid charges, including to the extent now or hereafter authorized by law, making the charge a lien against the real property served by the water connection for which the charge remains unpaid and causing charges with respect to such properties to be collected in the same manner as taxes levied against property within the city.

5.11 Arbitrage. The mayor and city clerk-treasurer, being the officers or the city charged with the responsibility for issuing the obligations pursuant to this ordinance, are authorized and directed to execute and deliver to the purchaser a certification in order to satisfy the provisions of section 1.103-13 of the amended Income Tax Regulation (26CFR Part 1) published in the Federal Register, May 5, 1973. Such certification shall state that on the basis of the facts, estimates and circumstances in existence on the date of issue and delivery of the bonds as therein set forth, it is not expected that the proceeds of the bonds will be used in a manner that would cause the bonds to be arbitrage bonds, and the certification shall further state that to the best of the knowledge and belief of the certifying officers there are no other facts, estimates or circumstances that would materially change such expectation.

5.12 Remedies. The holders of not less than 25% in principal amount of the outstanding bonds issued and secured under the provisions of this ordinance shall have the right, either at law or in equity, by suit, action or other proceeding, to protect and enforce the rights of all holders of such bonds and to compel the performance of any and all of the covenants required herein to be performed by the city, and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of gross revenues and the application and use thereof. No holder of less than this principal amount may institute any such proceeding, except that nothing herein shall impair the absolute and unconditional right of the holder of each bond to receive payment of the principal of and interest on such bond as such principal and interest respectively become due, and to institute suit for any such payment. The holders of a majority in principal amount of such outstanding bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the bondholders or the exercise of any power conferred on them, and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of or interest on any bond when due. Any court having jurisdiction of the action may appoint a receiver to administer the water system on behalf of the city with power to charge and collect rates, fees and charges sufficient to provide for the payment of the operating expenses and for the payment of any bonds or obligations outstanding against the system, and to apply the revenues in conformity with this ordinance and the laws of the State of Montana.

5.13 Rate Covenant. While any bonds payable from the Revenue Bond Account are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the water system to the city and to its inhabitants and to all customers within or without the boundaries of the city, shall be reasonable and just, taking into consideration the cost and value of the system and the cost of maintaining and operating it, and the amounts necessary for the payment of all bonds and the accruing interest thereon, and the proper and necessary allowances for the depreciation of the system, and no free service shall be provided to any person or corporation. The rates, charges and rentals now charged to all recipients of water service as referred to in section 5.14, have been estimated by the city engineer, on the basis of anticipated usage and costs, to be sufficient to produce in fiscal years 1977 and 1978, net revenues available for the Revenue Bond Account in an amount at least equal to 130% of the sum of the maximum amount of principal and interest to become due in subsequent fiscal years on the bonds herein authorized; the establishment of such ratio having been deemed necessary in order to sell the bonds upon terms most advantageous to the city. The excess of the net revenues over the annual principal and interest and reserve requirements of the bonds may be used as authorized in section 030 of this ordinance.

The following information was obtained from the records of the Department of the Interior, Bureau of Land Management, regarding the land owned by the State of California, and is being furnished to you for your information.

The land is situated in the County of [County Name], State of California, and is described as follows:

[Detailed description of the land, including acreage, location, and any other relevant information.]

The land is owned by the State of California, and is being held in trust for the benefit of the people of the State.

The land is being offered for sale to the highest bidder, and the proceeds of the sale will be used for the benefit of the State.

The land is being offered for sale on the following terms:

- The land will be sold in one or more parcels, as determined by the State.
- The land will be sold to the highest bidder, and the proceeds of the sale will be used for the benefit of the State.
- The land will be sold on the following terms: [Terms of sale, including any conditions, restrictions, or other relevant information.]

The land is being offered for sale on the following date: [Date of sale].

The land is being offered for sale at the following location: [Location of sale].

The land is being offered for sale at the following time: [Time of sale].

The land is being offered for sale at the following price: [Price of sale].

The land is being offered for sale at the following terms: [Terms of sale, including any conditions, restrictions, or other relevant information.]

The land is being offered for sale at the following location: [Location of sale].

The land is being offered for sale at the following time: [Time of sale].

The land is being offered for sale at the following price: [Price of sale].

The land is being offered for sale at the following terms: [Terms of sale, including any conditions, restrictions, or other relevant information.]

The bonds may be prepaid according to their terms on and after November 1, 1982, and in the estimation of the council any excess, prior to that date of net revenues over principal and interest payments actually due and the reserve required to be maintained therefore, will be needed to pay or to provide reserves for payment of replacements, renewal and improvement cost, in order to provide adequate service for the present population and the increase thereof reasonably to be expected; and after that date any excess not required for such purposes in the judgment of the council may be used to prepay bonds and thereby to reduce the interest cost thereon to the city and to the persons served by the water system. Accordingly, it is covenanted and agreed that such rates, charges and rentals shall be maintained, and shall be revised, subject to any required approval by the Public Service Commission of the State of Montana, whenever and as often as may be necessary, according to schedules such that the revenues in the fiscal year ending June 30, 1977, and in each fiscal year thereafter will be at least sufficient to pay the current expenses of operation and maintenance as herein defined and to maintain the operating reserve herein established and to produce net revenues fulfilling each of the following conditions:

- (a) The net revenues received during each fiscal year commencing with the fiscal year ending June 30, 1977 shall be not less than 130% of the sum of the maximum amount of principal and interest payable from the Revenue Bond Account during any subsequent fiscal year; and
- (b) if at the close of any fiscal year the net revenues actually received during each year have been less than required in clause (a) hereof, the city will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce net revenues if such amount, and will submit the same to the Public Service Commission and do all other things necessary to the end that such schedule will be placed in operation at the earliest possible date.

5.14 Existing Rates. Until modified in accordance with law and this ordinance, the rates, charges and rentals to be imposed and collected for water service and facilities rendered and made available by the system, and for connections thereto shall be those approved by the Public Service Commission on January 28, 1975, which became effective November 1, 1975.



3.08.060 Repeals and Effective Date.

6.01 Amendments Without Bondholder Consent. The city reserves the right to amend this ordinance from time to time and at any time for the purpose of curing any ambiguity; curing, correcting or supplementing any defective provision; making such provisions with regard to matters or questions arising hereunder as the city council may deem necessary or desirable, and are not inconsistent with this ordinance and do not adversely affect the interest of the holders of bonds issued hereunder; adding to the covenants and agreements herein contained, or to the revenues herein pledged, other covenants and agreements thereafter to be observed and additional revenues thereafter appropriated to the Water System Fund; surrendering any right or power herein reserved to or conferred upon the city; and authorizing the issuance of additional bonds in the manner and subject to the terms and conditions prescribed in section 040. Any such amendment may be adopted by ordinance, without the consent of the holders of any of the bonds issued hereunder.

6.02 Amendments With Bondholder Consent. With the consent of holders of bonds issued hereunder as provided in section 6.03, the city may from time to time and at any time amend this ordinance by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof, or any amending ordinance; except that no amendment shall be adopted at any time without the consent of the holders of all bonds issued hereunder which are then outstanding, if it would extend the maturities of any such bonds, would reduce the rate or extend the time of the principal or redemption premium thereof, would give to any bond or bonds any privileges over any other bond or bonds, would reduce the sources of revenues appropriated to the water system fund, would authorize the creation of a pledge of said revenues prior to or on a parity with the bonds (except as is authorized by section 040, or would reduce the percentage in principal amount of such bonds required to authorize or consent to any such amendment.)

6.03 Notice and Consent. Any amendment adopted pursuant to section 6.02, shall be made by ordinance, published in a financial newspaper of national circulation published in New York City, New York, and shall become effective only upon the filling of written consents with the city clerk-treasurer, signed by the holders or not less than two-thirds in principal amount of the bonds issued hereunder which are then outstanding or, in the case of an amendment not affecting all outstanding bonds, by the holders of not less than two-thirds in principal amount of the bonds affected by such amendment. Any written consent to an amendment may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by bond holders in person or by agent duly appointed in writing, and shall become effective when delivered to the city clerk-treasurer. Any consent by the holder of any bond shall bind him and every future holder of the same bond with respect to any amendment adopted by the

city pursuant to such consent, provided that any bond holder may revoke his consents of the holders of the required amount of bonds have not been received by the city clerk-treasurer within one year after the publication of any amendment, the amendment and all consents theretofore received shall be of no further force and effect.

6.04 Proof. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any person of bonds, shall be sufficient for any purpose of this ordinance and shall be conclusive in favor of the city if made in the manner provided in this section 6.04. The fact and date of the execution by any person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgment of deed, certifying that the person signing it acknowledged to him the execution thereof. The amount of bonds held by any person by or for whom a consent is given, and the distinguishing numbers of such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depository, wherever situated, if such certificate is deemed satisfactory by the city clerk-treasurer, showing that at the date therein mentioned such person had on deposit with such depository or exhibited to it, the bonds therein described; or such facts may be proved by the certificate or affidavit of the person executing such consent, if such certificate or affidavit is deemed satisfactory by the city clerk-treasurer. The city may conclusively assume that such ownership continues until written notice to the contrary is received by the city clerk-treasurer. The fact and date of execution of any such consent and the amount and distinguishing numbers of bonds held by the person executing the same may also be proved in any other manner which the city council may deem sufficient; but the council may nevertheless, in its discretion, require further proof in cases where it deems further proof is desirable.

3.08.070 Defeasance.

7.01 General. When the liability of the city on any bond issued under and secured by this ordinance and all coupons appertaining thereto has been discharged as provided in this section, all pledges, covenants and other rights granted by this ordinance to the holder of such bond shall cease.

7.02 Payment. The city may discharge its liability with reference to all bonds and coupons which are due on any date by depositing with the paying agent or agents for such bonds on or before that date a sum sufficient for the payment thereof in full or if any bond or coupon shall not be paid when due, the city may nevertheless discharge its liability with reference thereto by depositing with the paying agent or agents a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

7.03 Prepayable Bonds. The city may also discharge its liability with reference to any prepayable bonds which are called for redemption on any date in accordance with their terms, by depositing with the paying agent or agents on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due thereon, provided that notice of such redemption has been duly given.

7.04 Escrow. The city may also at any time discharge its liability in its entirety with reference to any bond or bonds, and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose cash or securities which are authorized by law to be so designated bearing interest payable as such times and at such rates and maturing on such dates as shall be required to provide funds sufficient to pay all principal, interest and redemption premiums to become due on all bonds of the issue on and before the designated redemption date.

3.08.080 Repeals and Effective Date.

8.01 Repeal. All provisions of ordinances, resolutions and other actions and proceedings of the City of Harlowton, and of the city council which are in any way inconsistent with the terms and provisions of this ordinance are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this ordinance.

8.02 Effective Date. This ordinance shall be in full force and effect from and after its final passage and approval according to law.

