

ORDINANCE NO. 1161

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF WATER UTILITY BOND ANTICIPATION NOTES, SERIES 2018, IN THE AMOUNT OF SIX HUNDRED THOUSAND DOLLARS (\$600,000) FOR THE PURPOSE OF PAYING THE COSTS OF CONSTRUCTING ADDITIONS AND IMPROVEMENTS TO THE WATER UTILITY OF THE CITY OF ASHLAND, NEBRASKA; PROVIDING FOR A PAYING AGENT AND REGISTRAR OF THE NOTES; AGREEING TO ISSUE BONDS TO PAY THE NOTES AND ACCRUED INTEREST AT MATURITY; PRESCRIBING THE FORM OF THE NOTES; AUTHORIZING THE SALE AND DELIVERY OF THE NOTES TO THE PURCHASER AND ORDERING THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ASHLAND, NEBRASKA:

Section 1. The Mayor and Council of the City of Ashland, Nebraska, hereby find and determine:

(a) That the City has by ordinance authorized the construction of certain additions and improvements to the water utility of the City pursuant to Section 17-534, R.R.S. Neb. 2012, and all actions and other required facts and conditions for the construction of improvements therein have occurred as required by law;

(b) That it is necessary and appropriate to construct, and the City is constructing, additions and improvements to the water utility of the City;

(c) That for this purpose the City will issue its general obligation bonds or other bonds after further determination as to the total remaining costs of the improvements and after finding an appropriate market for said bonds and that the total costs of such improvements, including the cost of issuance of the Notes authorized herein, are presently estimated to be in excess of \$600,000;

(d) That, pending permanent financing by the issuance of bonds, it is necessary and desirable in order to provide temporary financing, to issue Bond Anticipation Notes; and

(e) That said Notes shall not be a debt of the City within the meaning of any constitutional, statutory or other limitation on the creation of general obligation indebtedness, and the City shall not be liable for the payment of the principal thereof out of any money of the City other than the money received through the issuance and sale of the City's general obligation water bond or bonds as contemplated herein, or from other funds of the City available to pay interest on and principal of said Notes and to pay a portion of the cost of the project so as to reduce the required financing; and

(f) That all conditions exist for the issuance of Water Utility Bond Anticipation Notes, Series 2018, in the amount of \$600,000 pursuant to Section 10-137, R.R.S. Neb. 2012.

Section 2. Notes to be designated Water Utility Bond Anticipation Notes, Series 2018 (the

“Notes”), in the amount of \$600,000, which shall be in denominations of \$5,000 each or any integral multiple thereof as determined by the City Treasurer prior to delivery, are hereby authorized to be issued. The Notes shall be dated as of their date of delivery and shall bear interest at the rate of two and thirty hundredths percent (2.30%) per annum and become due on December 15, 2020. The Notes shall bear interest from the date of delivery until maturity or earlier redemption, with such interest payable June 15 and December 15 of each year, beginning June 15, 2019. Said Notes are optional for prepayment at par plus accrued interest on September 15, 2019 or at any time thereafter. The City may select the Notes to be redeemed for optional redemption in its sole discretion. Any Notes to be redeemed in part shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Notes redeemed in part only shall be surrendered to the Paying Agent and Registrar in exchange for a new note or notes evidencing the unredeemed principal thereof. Notice of redemption of any note called for redemption shall be given at the direction of the City by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such note at such owner’s registered address. Such notice shall designate the note or Notes to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such note or notes are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any note partially redeemed, such notice shall specify the portion of the principal amount of such note to be redeemed. If any note or an interest payment thereon is not paid at maturity or due date, the note or interest installment shall bear interest thereafter until paid at a rate equal to the rate assessed against delinquent taxes under Section 45-104.01 R.R.S. Nebraska 2010, as now existing or as the same may be amended from time to time by the Nebraska Legislature. Said Notes shall be delivered to Ameritas Investment Corp., upon receipt of payment for said Notes, at the purchase price therefor agreed to in the Note Purchase Agreement within the parameters set forth above. Said Notes are sold to the purchaser subject to the opinion of independent bond counsel that said Notes are lawfully issued; that said Notes constitute a valid obligation of the City; and that under existing laws and regulations, the interest on said Notes is exempt from both Nebraska state and federal income taxes. Said purchaser and its agents, representatives and counsel (including its bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Notes, including, without limitation, authorizing the release of the Notes by the Depository (as defined herein) at closing.

Section 3. Said Notes shall be dated the date of their delivery, be executed on behalf of the City by being signed by the Mayor and the City Clerk, both of which signatures may be facsimile signatures, and shall have the City seal impressed on each note. After being executed by the Mayor and City Clerk, said Notes shall be delivered to the Paying Agent and Registrar who shall register each note in the name of its initial registered owner as designated by the initial purchaser. Each note shall be authenticated on behalf of the City by the Paying Agent and Registrar. The Notes shall be issued initially as “book-entry only” notes using the services of The Depository Trust Company (the “Depository”), with one typewritten note per maturity being issued to the Depository. In such connection said officers of the City are authorized to execute and deliver a letter of representations and inducement (the “Letter of Representations”) in the form required by the Depository (including any blanket letter previously delivered), for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Notes. Upon issuance of the Notes as “book-entry-only” notes, the following

provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Notes as securities depository (each, a "Note Participant") or to any person who is an actual purchaser of a note from a Note Participant while the Notes are in book-entry form (each a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Note Participant with respect to any ownership interest in the Notes;

(ii) the delivery to any Note Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Notes, including any notice of redemption, or

(iii) the payment to any Note Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Notes. The Paying Agent and Registrar shall make payments with respect to the Notes only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Notes to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Note, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable to or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Notes requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Notes or (ii) to make available Notes registered in whatever name or names the Beneficial Owners transferring or exchanging such Notes shall designate.

(c) If the City determines that it is desirable that certificates representing the Notes be delivered to the ultimate Beneficial Owners of the Notes and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the depository will notify the Note Participants of the availability through the Depository of note certificates representing the Notes. In such event, the Paying Agent and Registrar shall issue, transfer and exchange note certificates representing the Notes as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any note is registered in the name of the Depository or any nominee thereof, all payments with respect to such note and all notices with respect to such note shall be made and given, respectively,

to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Notes may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Notes may be delivered in physical form to the following:

(i) any successor securities depository or its nominee; or

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section and the terms of the Paying Agent and Registrar's Agreement (if any).

(f) In the event of any partial redemption of a note unless and until such partially redeemed note has been replaced in accord with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such note as is then outstanding and all of the Notes issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of note certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement note certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of note certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any note shall cease to be such officer before the delivery of such note (including any note certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption) such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such note. The Notes shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Notes shall be delivered to the Paying Agent and Registrar for registration and authentication.

Section 4. All Notes authorized by this ordinance shall be fully registered notes pursuant to Section 10-135, R.R.S. Neb. 2012. The Treasurer of the City of Ashland, Nebraska, is hereby designated as Paying Agent and Registrar for the Notes. Said Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Notes at such Treasurer's office in Ashland, Nebraska. The names and registered addresses of the initial registered owner or owners of the Notes shall be recorded in such books prior to the issuance thereof. Any note may be transferred pursuant to its provisions at the office of the Paying Agent and Registrar upon surrender of the note for notation of transfer, accompanied by a written instrument of transfer, in form satisfactory to such Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar will register such transfer and will deliver at such office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new note or notes of the

same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Notes by this Ordinance, one note may be transferred for several such Notes of the same interest rate and maturity and for a like aggregate principal amount, and several such Notes may be transferred for one or several such Notes, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a note, the surrendered note or notes shall be canceled and destroyed. All Notes issued upon transfer of the Notes so surrendered shall be valid obligations of the City evidencing the same obligations as the Notes surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Notes upon transfer of which they were delivered. The City Treasurer is hereby authorized and directed to transfer, from any monies of the City available for the purpose, funds required to pay interest and principal on the Notes when and as the same become due, to the Paying Agent and Registrar on or before each interest and principal payment date. Payment of interest, except for payment of interest at maturity or upon redemption, shall be mailed to the registered owners of the Notes as of the record date for each interest payment date. The record date for each interest payment date shall be the close of business on the fifteenth day immediately preceding the interest payment date. The principal, together with accrued interest then due, shall be payable at maturity or on redemption prior to maturity upon presentation and surrender of each note at the office of the Paying Agent and Registrar in Ashland, Nebraska. The City and the Paying Agent and Registrar shall not be required to transfer Notes during any period from any record date until its immediately following interest payment date or to transfer any Notes called for redemption for a period of thirty days next preceding any date fixed for redemption prior to maturity.

Section 5. The fully registered Water Utility Bond Anticipation Notes, Series 2018, shall be in substantially the following form:

CITY OF ASHLAND, NEBRASKA
 WATER UTILITY BOND ANTICIPATION NOTE
 SERIES 2018

No.		\$	
	<u>Interest Rate</u> _____%	<u>Maturity Date</u> December 15, 2020	<u>Date of Delivery</u> December 5, 2018
			<u>CUSIP No.</u> _____

Registered Owner: _____

Principal Amount: _____

The City of Ashland, Nebraska, hereby promises to pay to the registered owner specified above the sum specified above on the maturity date specified above, together with interest thereon from the date of delivery hereof until maturity (or earlier redemption) at the rate per annum specified above, payable on June 15 and December 15 of each year, beginning June 15, 2019. The interest hereon shall be paid on each interest payment date by the Treasurer of the City of Ashland, Nebraska, as Paying Agent and Registrar, by wire transfer, check or draft mailed to the registered owner hereof determined as of the close of business on the fifteenth day immediately preceding the interest payment date, at such owner's registered address as it appears on the books of registration of the City as maintained by said Paying Agent and Registrar. The principal of this note and the interest due at maturity or upon call for redemption prior to maturity are payable on presentation and surrender to said Paying Agent and Registrar at the Paying Agent's office in Ashland, Nebraska. If this note or any interest installment hereon is not paid upon maturity or due date, the note or interest installment shall bear interest thereafter until paid at a rate equal to the rate assessed against delinquent taxes under Section 45-104.01 R.R.S. Nebraska, 2010, as now existing or as the same may be amended from time to time by the Nebraska Legislature. This note and interest accruing hereon shall be payable from funds received by the City from the issuance and sale of its general obligation bonds or other bonds and is optional for payment on September 15, 2019, or at any time thereafter at par plus accrued interest. This note is one of an issue of \$600,000 in total principal amount issued pursuant to Ordinance No. _____. All of the provisions and agreements of said Ordinance are by reference made a part of this instrument and all such agreements accrue to the registered owner of this note. This note shall not be a debt of the City of Ashland within the meaning of any constitutional, statutory or charter limitation upon the creation of general obligation indebtedness of said City and said City shall not be liable for the payment of the principal thereof out of any money of the City other than from proceeds of the issuance of general obligation bonds, as aforesaid, or other funds of the City available to pay interest on said note or a portion of the cost of the project so as to reduce the required financing.

This note is transferable by the registered owner or such owner's attorney duly authorized in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this note, and thereupon a new note or notes of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the ordinance authorizing said issue of Notes, subject to the limitations therein prescribed. The City, its Paying Agent and Registrar and any other person may treat the person in whose name this note is registered as the absolute owner hereof for the purpose of receiving payment hereof and for all purposes and shall not be affected

by any notice to the contrary, whether this note be overdue or not.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE PAYING AGENT AND REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS NOTE MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE PAYING AGENT AND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT AND REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY NOTE ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

This note shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and Council of the City of Ashland, Nebraska, have caused this note to be executed on behalf of the City by being signed by the Mayor and Clerk of the City, both of which signatures may be facsimile signatures, and by causing the official seal of the City to be affixed hereto all as of the date of delivery shown above.

CITY OF ASHLAND, NEBRASKA

By: _____ (Do not sign)
Mayor

ATTEST:

(Do not sign)
City Clerk

(SEAL)



CERTIFICATE OF AUTHENTICATION

This note is one of the notes authorized by an ordinance passed and approved by the Mayor and Council of the City of Ashland as described in said notes.

(Do not sign)
Treasurer, City of Ashland, Nebraska,
Paying Agent and Registrar,

(FORM OF ASSIGNMENT)

For value received _____ hereby sells, assigns and transfers unto _____ the within note and hereby irrevocably constitutes and appoints _____, Attorney, to transfer the same on the books of registration in the office of the within mentioned Paying Agent and Registrar with full power of substitution in the premises.

Date: _____

Registered Owner

SIGNATURE GUARANTEED
By _____

Authorized Officer

Note: The signature(s) of this assignment MUST CORRESPOND with the name as written on the face of the within note in every particular without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 6. Notice of the call of any of said Notes for payment prior to maturity shall be sufficient if it has been communicated at least thirty days prior to the redemption date by any means by or on behalf of the City to the registered owner of each of the Notes to be redeemed.

Section 7. Additional Water Utility Bond Anticipation Notes can be authorized if deemed necessary by the Council by appropriate ordinance.

Section 8. The proceeds received from the sale of the Notes shall be used to pay project costs as set out in Section 1 hereof.

Section 9. The City covenants and agrees that it will take all steps required to complete the improvements described in Section 1 hereof in a manner to allow it to issue and sell its general obligation bonds or other bonds. The City further covenants and agrees to issue and sell its general obligation water bonds or other bonds in a sufficient amount and at such time as will enable it to take up and pay off the Notes herein ordered issued, both principal and interest, at or prior to maturity, to the extent not paid from other sources.


Section 10. The City of Ashland, Nebraska, hereby covenants to the purchasers and

holders of the Notes hereby authorized that it will make no use of the proceeds of said note issue, including monies held in any sinking fund for the payment of said Notes, which would cause said Notes to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and further covenants to comply with said Sections 103 and 148 and all applicable regulations thereunder throughout the term of said note issue. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax-exempt status of interest payable on the Notes with respect to taxpayers generally but not including insurance companies or corporations subject to the additional minimum tax. The City hereby designates the Notes as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not anticipate issuing tax-exempt obligations in calendar year 2018 in an amount in excess of \$10,000,000.

Section 11. In order to promote compliance with certain federal tax and securities laws relating to the bonds herein authorized (as well as other outstanding bonds) the policy and procedures attached hereto as Exhibit "A" (the "Post-Issuance Compliance Policy and Procedures") are hereby adopted and approved in all respects. To the extent that there is any inconsistency between the attached Post-Issuance Compliance Policy and Procedures and any similar policy or procedures previously adopted and approved, the Post-Issuance Compliance Policy and Procedures shall control.


Section 12. This ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 18th day of November, 2018.



Mayor

ATTEST:



Deputy City Clerk

(S E A L)



I, the undersigned, City Clerk for the City of Ashland, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Council on November 1st, 2018; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and readily available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting; and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.

Jessica Gandy
Deputy City Clerk

(SEAL)

