



Called Meeting of the Board of Directors

City of Texarkana, Arkansas

216 Walnut Street

Agenda - Thursday, October 24, 2019 - 4:00 PM

Call to Order

Roll Call

Invocation and Pledge of Allegiance given by Mayor Allen Brown

REGULAR

1. Adopt an Ordinance approving the Section 108 Loan Agreement from the U.S. Department of Housing and Urban Development (HUD) for the rehabilitation of #1 Legion Drive. (PWD) Assistant Public Works Director Tracie Lee and Jim Fowler, Rose Law Firm

The applicant requests an emergency clause. An emergency clause requires a separate and distinct vote of the board and is valid only if there is a two-thirds vote of approval by the board. (Hdbk. Const. Amend 7)

NEXT MEETING DATE: Monday, November 4, 2019

ADJOURN

2019 City Calendar

Four States Auto Museum Car Show Fundraiser - Friday & Saturday, October 25-26, 2019

Hopkins Icehouse Halloween Party - Saturday October 26, 2019

Veterans Day Parade - Saturday, November 9, 2019

Gateway Farmers Market Thanksgiving Market - Saturday, November 23, 2019

Gateway Farmers Market Christmas Market - Saturday, December 14, 2019

Juneteenth Celebration - Saturday, June 27, 2020



CITY OF TEXARKANA, AR

BOARD OF DIRECTORS

AGENDA TITLE:	Adopt an Ordinance approving the Section 108 Loan Agreement from the U.S. Department of Housing and Urban Development (HUD) for the rehabilitation of #1 Legion Drive. (PWD) Assistant Public Works Director Tracie Lee and Jim Fowler, Rose Law Firm <i>The applicant requests an emergency clause. An emergency clause requires a separate and distinct vote of the board and is valid only if there is a two-thirds vote of approval by the board. (Hdbk. Const. Amend 7)</i>
AGENDA DATE:	October 24, 2019
ITEM TYPE:	Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	Public Works Department
PREPARED BY:	Tracie Lee, Assistant Public Works Director
REQUEST:	Adopt an ordinance.
EMERGENCY CLAUSE:	Yes.
SUMMARY:	Adopt an Ordinance.
EXPENSE REQUIRED:	\$0
AMOUNT BUDGETED:	\$0
APPROPRIATION REQUIRED:	\$0
RECOMMENDED ACTION:	The City Manager and staff recommend approval.
EXHIBITS:	Ordinance, Memo and Issuer Certificate

CERTIFICATE OF THE CITY OF TEXARKANA, ARKANSAS

The undersigned Mayor, City Manager and City Clerk of City of Texarkana, Arkansas (the "Issuer"), a duly organized and existing municipality and political subdivision of the State of Arkansas, do hereby certify, and covenant as follows:

1. The undersigned are the duly elected and acting Mayor and the duly appointed and acting City Clerk of the Issuer and as such officials have in their possession or have access to the official books and corporate records of the Issuer. This certificate is executed in connection with the issuance by the Issuer of its \$885,000 aggregate principal amount Variable/Fixed Rate Note (the "Note") be guaranteed by the Secretary of Housing and Urban Development ("HUD") under section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5308 ("Section 108").
2. Attached hereto as Exhibit A is an affidavit of the publisher of the *Texarkana Gazette* showing that a Notice of Public Hearing on issuance of revenue bonds was published on _____, 2019.
3. Attached hereto as Exhibit B is a true, complete, and correct copy of the minutes of a regular meeting of the Board of Directors of the Issuer held September 16, 2019 reciting results of a public hearing on the issuance of a revenue note, as such minutes appear in the official records of the Issuer; at such meeting a quorum was present and acted throughout.
4. Attached hereto as Exhibit C is a true, complete, and correct copy of Ordinance No. _____, authorizing the issuance of the Note (the "Note Ordinance"), duly adopted by a majority of the Board of Directors of the Issuer, with the emergency clause duly adopted by a two-thirds vote of the Board of Directors, present at a duly called meeting of the Board of Directors of the Issuer open to the public, held on _____, 2019, as the Note Ordinance appears in the official records of the Issuer; at such meeting a quorum was present and acted throughout; the Note Ordinance is in full force and effect and has not been altered, amended, or repealed as of the date hereof. No petition or petitions to refer the Bond Ordinance to the people under Amendment No. 7 of the Constitution of the State of Arkansas has been filed as of the date hereof and the Board of Directors of the Issuer has not referred the Note Ordinance to the people for adoption or rejection. Attached hereto as Exhibit I is an affidavit of the publisher of the *Texarkana Gazette* showing publication of the Bond Ordinance on _____, 2019.
5. Attached hereto as Exhibit D is a true, complete, and correct copy of the minutes of a regular meeting of the Board of Directors of the Issuer held _____, 2019, showing the adoption of the Note Ordinance, as such minutes appear in the official records of the Issuer; at such meeting a quorum was present and acted throughout.
6. The following described instruments, as executed and delivered by the Mayor and/or City Clerk of the Issuer, on behalf of the Issuer, are in substantially the same form and text as

the copies of such instruments which were before and/or approved by the Issuer at the _____, 2019 meeting referred to in paragraph 4 above, with such changes not inconsistent with the Bond Ordinance that have been approved by the Mayor and the City Clerk:

Document	Date	Other Party or Parties
The Note.	_____, 2019	None.
Contract for Loan Guarantee Assistance under Section 108 between the Issuer and HUD (the "Contract").	_____, 2019	Secretary of HUD

7. The undersigned Mayor did execute and the undersigned City Clerk did attest, by manual signatures, the Note, being initially issued in the form of a fully registered typewritten note dated _____, 2019. Said persons were at the time of the execution of the Note and are now the duly elected, qualified, and acting incumbents of their offices, duly authorized to execute and deliver the Note.
8. The Issuer represents and acknowledges that the interest rate or rates on the Note will be determined by actions taken by HUD and/or the Holder (as defined in the Note) without further approval or consent by the Issuer. The Issuer acknowledges that: (i) it may be required to accept such rate adjustments without limitation or reference to a verifiable index or method of determination; and (ii) that upon conversion to a fixed rate, prepayment of the Note will be prohibited for a period of 10 years. The Issuer represents that it has determined the Section 108 guarantee provides additional creditworthiness and market access not otherwise available to the Issuer and that it in the best interest of HUD, as guarantor, to access the lowest cost of financing. Based on such determination, the Issuer represents that it knowingly assents to the methods of determination of interest rates and the terms of commencement of long term fixed rate as set forth in the Note. The Issuer acknowledges that its counsel, Rose Law Firm, a Professional Association, may rely upon this representation in rendering its legal opinion regarding the enforceability of the Note and the Contract.
9. All warranties, representations, and covenants made by the Issuer in the Contract have been carefully reviewed and are true and correct on the date hereof with the same effect as though made on and as of the date hereof.
10. The Issuer is not aware of any outstanding, or threatened, action, suit, proceeding, investigation or litigation against the Issuer which would affect the validity of the Note or the security therefor.

11. Allen L. Brown, Mayor, hereby certifies that the signatures of Heather Soyars, City Clerk, and Kenny Haskin, City Manager affixed hereto are their true and correct signatures, and Heather Soyars, City Clerk, hereby certifies that the signature of Allen L. Brown, Mayor, affixed hereto is his true and correct signature.

IN WITNESS WHEREOF, the undersigned have hereunto set their signatures as of _____, 2019.

CITY OF TEXARKANA, ARKANSAS

By: _____

Allen L. Brown, Mayor

By: _____

Heather Soyars, City Clerk

By: _____

Kenny Haskin, City Manager

Subscribed and sworn to before me, as notary public within and for the State of Arkansas and County of Miller, this _____, 2019.

Notary Public

My commission expires:

(S E A L)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF TEXARKANA, ARKANSAS, AUTHORIZING THE ISSUANCE OF A VARIABLE/FIXED RATE NOTE IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$885,000, WHICH WILL BE USED TO FINANCE THE ACQUISITION, CONSTRUCTION, REHABILITATION AND EQUIPPING OF A RECREATIONAL FACILITY LOCATED WITHIN THE CITY OF TEXARKANA, ARKANSAS; AUTHORIZING A CONTRACT FOR LOAN GUARANTEE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT; AUTHORIZING THE PLEDGE OF THE CITY'S COMMUNITY DEVELOPMENT FUND AND THE CITY'S REFUSE ACCOUNT WITHIN PUBLIC WORKS FUND AS THE SOLE SOURCE OF PAYMENT AND SECURITY FOR THE NOTE; AUTHORIZING OTHER DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE AND SALE OF THE NOTE; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to the Constitution and laws of the State of Arkansas, including particularly the Local Government Capital Improvement Revenue Bond Act of 1985 (the "Act"), the City of Texarkana, Arkansas (the "City") is authorized to issue its revenue bonds to include notes or evidences of indebtedness to finance capital improvements and to pledge to the repayment of the notes, revenues or any other special fund or source other than taxes or assessments for local improvements; and

WHEREAS, the City has determined to accomplish public safety betterments and improvements consisting generally of acquisition, construction, rehabilitation and equipping of recreational facilities (the "Project"); and

WHEREAS, in order to provide moneys for the Project and to pay the costs of issuing notes, the City has determined to issue its Variable/Fixed Rate Note (the "Note"), in the principal amount of \$885,000; and

WHEREAS, the Secretary of Housing and Urban Development (HUD) under Section 108 of the Housing and Community Development Act of 1974 has approved the City's application to participate in the Section 108 Loan Guarantee Program (the "Guarantee Program"); and

WHEREAS, pursuant to the Guarantee Program Daedalus & Co as nominee for Money Market Obligations Trust (the “Lender”) has agreed to purchase the Note; and

WHEREAS, pursuant to the Guarantee Program, the City will pledge to the repayment of the Note any grant for which the City may become eligible under Title I of the Housing and Community Development Act of 1974, as amended, and revenues derived from fees and charges levied and collected by the City for collection and disposal of solid waste (collectively referred to as the “Pledged Revenues”); and

WHEREAS, following notice duly published pursuant to Act 852 of the Acts of Arkansas of 1987, as amended, the City conducted a public hearing and any person interested was invited to speak concerning the issuance of the Note; and

WHEREAS, the Board of Directors of the City desire to adopt an Ordinance authorizing the City to issue the Note and to execute and deliver various documents pertaining to the issuance the Guarantee Program;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Texarkana, Arkansas, as follows:

Section 1. The issuance of the Note in the aggregate principal amount not to exceed \$885,000 is hereby authorized, and the Mayor and City Clerk are hereby authorized to execute, by manual or facsimile signature, and deliver the Note to or upon the direction of the Lender. Except as otherwise provided in this Ordinance, the Note shall be issued in the form and denominations, shall be dated, shall mature, shall bear interest at the rates, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the form of Note presented at this meeting and the Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308, by and between the City and the United States Department of Housing and Urban Development (“HUD”), substantially in the form presented at this meeting (the “Contract”). The Note shall not be a general obligation of the City, but shall be a special obligation, payable from and secured by the Pledged Revenues.

Section 2. The initial variable interest rate on the Note prior to the Conversion Date (as defined in the Note) shall be 20 basis points (0.2%) above the Applicable LIBO Rate (as defined in the Note), and thereafter will be the Standard Note Rate (as defined in the Note), the Negotiated Special Interest Rate (as defined in the Note), the Holder Determined Interest Rate (as defined in the Note), or the New Purchase Special Interest Rate (as defined in the Note), as provided in the Note, or

in the event the Applicable LIBO Rate is no longer available, such other variable rate of interest generally accepted as a substitute for the LIBO Rate and as mutually agreed upon by the City, the holder of the Note, and HUD. Pursuant to the Contract, the City will agree to the fixed rate of interest rate on Note from the Conversion Date, as determined by the Secretary of HUD.

Section 3. To secure repayment of the Note and other charges as may be authorized by the Contract, the City hereby grants and pledges to the Secretary of HUD a security interest in the Pledged Revenues which shall constitute a first lien on the Pledged Revenues.

Section 4. To prescribe the terms and conditions upon which the Note is to be executed, authenticated, delivered, issued, accepted, held, and secured, the City Manager is hereby authorized and directed to execute the Contract. The Contract and Note are hereby approved in substantially the forms submitted at this meeting, and the City Manager is hereby authorized, upon the advice of bond counsel, to confer with the HUD in order to complete the Contract and Note with such modifications as shall be approved by the City Manager, his or her execution to constitute conclusive evidence of such approval.

Section 5. The Mayor and City Manager, for and on behalf of the City, are each individually hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Contract and the Note; the execution and delivery of such other papers and documents necessary to effect the issuance of the Note and the fixing of the interest rate on the Conversion Date; and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Manager are each individually hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates, and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 6. Interest on the Note shall not be excludable from the gross income of the holder for Federal income tax purposes.

Section 7. It is hereby ascertained and declared that the Project must be accomplished as soon as possible in order to alleviate immediate hazards to the health, safety, and welfare of the City, its inhabitants, and their property, and that the Project can be accomplished only by the issuance of the Note. It is, therefore, declared that an emergency exists and this Ordinance, being necessary for the immediate preservation of the public peace, health, and safety, shall take effect and be enforced from and after its passage.

PASSED AND APPROVED this 24th day of October, 2019.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney

PREPARED BY:

James M. Fowler, Jr., Rose Law Firm, a
Professional Association, Bond Counsel



MEMORANDUM

To: City of Texarkana, Arkansas
Allen Brown, Mayor
Kenny Haskin, City Manager
George Matteson, City Attorney
TyRhonda Henderson, City Finance Director
Tracie Lee, Assistant Director of Public Works
Heather Soyars, City Clerk

From: Jim Fowler

Date: October 18, 2019

Re: Recreation Center Ordinance

Background

The proposed ordinance is required for the City to borrow funds under the U.S Department of Housing and Urban Development (“HUD”) Section 108 Loan Guarantee Program (the “Section 108 Program”). The proposed ordinance incorporates the HUD form Contract for Loan Guarantee Assistance (the “Contract”) and the HUD form Variable/Fixed Rate Note (the “Note”) required to participate in the Section 108 Program. Accordingly, the basic terms of the City’s loan are contained in the ordinance, the Contract and the Note. This follows the legal structure for typical City bond issues which an ordinance authorizes the issuance of bonds (in this case the Note) and the incorporation of terms in a bond indenture (in this case the Contract). The Contract and the Note are the primary documents used by HUD to connect the City with private third parties HUD uses to fund and administer the Section 108 Program nationally.

Among other issues, I have raised the following concerns with HUD: (1) the principal amortization schedule contained in the Note; and; (2) the mechanisms for the determination of future interest rates and conversion to a fixed rate loan (“Conversion”) contained in the Note and Contract.

Terms of the Loan.

Currently, HUD has agreed to the following:

(1) Principal Amortization:

We pointed out to HUD that under current interest rate assumptions the loan would not amortize using the City’s budgeted annual CDBG funds. HUD has responded that they have flexibility in the principal amortization found in the Commitment Schedule attached and has invited the City to propose a principal amortization schedule. I suggest that TyRhonda and Tracie get back to them with a new schedule.

(2) Interest Rates and Conversion Mechanisms:

The Section 108 Program has essentially two interest rate modes: (a) pre-Conversion rates that are variable and, (b) the post-Conversion rate that is fixed. Amortization of principal and final maturity as presented in the Note Commitment Schedule applies to both modes. Prior to Conversion to a fixed rate the City may prepay loan in whole or in part. After Conversion the City may not prepay any part of the loan prior to August 1, 2029. The scheduled principal maturities in the Note Commitment Schedule are not considered to be prepayments.

As further described below, the Note and Contract permit the setting of future interest rates by HUD and/or third parties including the holder of the Note without further consultation, approval or consent of the City. Also as further described below, the commencement date of the Post Conversion fixed rate is at the sole discretion of HUD without further consultation, approval or consent of the City. While the bond authorizing act does not expressly require the setting of the interest rate, under general Arkansas law, the interest rate is an essential term of a contract for the loan of money. To be enforceable there must be a “meeting of minds” as to essential terms of a contract. The chart below provides a partial summary of how the interest rates are determined.

Pre-Conversion Variable Rates				
Waterfall for Reset	Period	Index/Negotiated	Determined by	Reference
	Initial Rate- Until May 1, 2020	90 Day LIBOR + 20BP reset monthly	City and HUD pursuant to Note	“Standard Interest Rate”
If no public offering by March 1	From and until each May 1	Negotiated, may be Standard Interest Rate	HUD and Holder	“Negotiated Special Interest Rate”
If no Negotiated Special Interest Rate by April 15	From each May 1 until Public Offering Date or purchased by new Holder	At rate Holder can sell the Note at par monthly	Holder unilaterally	“Holder Determined Interest Rate”
If HUD and Holder fail to agree on Holder Determined Interest Rate sell to new Holder	From each May 1 or any Business Day	At rate new holder can sell the Note at par (monthly?)	HUD and new Holder	“New Purchaser Special Interest Rate”

Post-Conversion Fixed Rate				
Commencement of Reset	Period	Index/Negotiated	Determined by	Reference
Conversion Date*	Until retirement of bonds	Negotiated	HUD and its underwriters	Rate on trust certificate

* The Conversion Date is defined as the date (if any) upon which the Note is assigned to HUD’s Trustee after the public offering of trust certificates that set the rate. In the Contract the City agrees that the rate on the trust certificate governs the rate on the Note. At that point HUD changes the principal and interest schedule to the Note to reflect the fixed rate. The public offering refers to pricing and sale of the trust certificate securities by HUD’s investment banker that sets the rate at Conversion.

We presented our concern regarding the absence of the City's approval or consent to future interest rates. HUD responded that the Section 108 Program does not permit future rate approval by the City or the inclusion of a maximum, not to exceed, rate in the ordinance. HUD explained that it cannot effectively provide the overall financing program with individual borrowers retaining control.

We attempted to provide a backstop to City's control through its option to prepay the loan. That option is available (upon 14 days' notice from the City at any time prior to Conversion. After Conversion, prepayment is locked out until August 1, 2029. The Note required HUD's consent to any prepayment, but we were able to obtain a pre-consent from HUD. We were also successful in lengthening HUD's notice of public offering from 30 to 90 days which would give the City a reasonable time to refinance the loan. HUD, however, would not agree to the receipt of that notice as a requirement to the City's acceptance of the post-Conversion fixed rate. As currently written, HUD has the right to give the notice in but not the obligation.

Risks.

We have some additional comments on the HUD documents which we anticipate we can resolve prior to next Thursday's special meeting. As it stands now, however, it is anticipated that the City will have the following risks in connection with the HUD loan:

- * Interest rate risk of future resets of the variable rate mode and the fixed rate mode.
- * LIBOR goes "dark" at the end of 2020.
- * No legal requirement for Conversion to a fixed rate.
- * Prepayment lock-out until August 1, 2029 after Conversion.
- * Time restraints on refinancing the loan before Conversion.
- * Indeterminate future fees of HUD private participants.

HUD has advised that historically the variable rate mode has always reset at using the Standard Interest Rate index and that Conversions have occurred approximately every three or four years depending on the amount of loans originated nationally and market conditions. While there is no reason to believe their past experience is not reliable, there is no legal assurance it that will be the case in the future.

We have researched the Arkansas law regarding the validity and enforceability of the loan. We have not found case law that considers terms and conditions similar to those required by HUD. It is necessary that there be a "meeting of the minds" as to the essential terms of the contract, in particular the interest rate provisions. In our judgement, the City could assent to the interest rate terms if it finds: that HUD has an interest as guarantor that is parallel with the City's, i.e. reducing its exposure by obtaining the lowest possible cost of financing; and, that HUD's credit as an agency of the United States of America provides a more favorable access to the capital markets. In such a case, the City could reasonably rely on HUD to make future interest rate determinations on its behalf. This is a factual and financial determination the City would have to make.



a Professional Association

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER
SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT
OF 1974, AS AMENDED, 42 U.S.C. §5308

Date of Contract _____

This Contract for Loan Guarantee Assistance ("Contract") is entered into between the City of Texarkana, Arkansas, as Borrower (the "Borrower"), and the Secretary of Housing and Urban Development ("Secretary"), as guarantor for the Guarantee made pursuant to section 108 ("Section 108") of title I of the Housing and Community Development Act of 1974, as amended (the "Act") and 24 CFR Part 570, Subpart M, of the promissory note executed contemporaneously herewith and numbered B-18-MC-05-0007 [Texarkana Recreational Facility Project], in the Maximum Commitment Amount of \$885,000, and any amended note or note issued in substitution for such note and having the same note number (the "Note"). This is the first Contract under the Funding Approval ("Commitment") of the same number, which was approved by the Secretary on May 23, 2019. The funds paid or credited to the account of the Borrower pursuant to the Note are referred to herein as the "Guaranteed Loan Funds." The Note (including the Fiscal Agency Agreement and the Trust Agreement as defined in Section I.A. of the Note and incorporated therein) is hereby incorporated into the Contract. Terms used in the Contract with initial capital letters and not otherwise defined in the text hereof shall have the respective meanings given thereto in the Note. The Fiscal Agency Agreement and the Trust Agreement are sometimes collectively referred to herein as the "Fiscal Agency/Trust Agreements," and the Fiscal Agent and the Trustee respectively are sometimes collectively referred to as the "Fiscal Agent/Trustee."

PART I

- A. **The Note: Advances and Records.** The Note provides that Advances and Conversion Date Advances shall be made thereunder upon the written request of the Borrower and the approval of the Secretary, pursuant to this Contract and the Fiscal Agency Agreement. The Commitment Schedule attached to the Note represents the principal repayment schedule for the Maximum Commitment Amount of the Note.

At all times, the total amount of all Advances and Conversion Date Advances under the Note for all Principal Due Dates shall not exceed the Maximum Commitment Amount of the Note. Prior to the Conversion Date (as defined in the Note, Section I.A.), the total amount of Advances made by the Holder for each Principal Due Date under the Note shall not exceed the applicable Commitment Amount for such Principal Due Date set forth in the Commitment Schedule of the Note. Prior to the Conversion Date, the Borrower agrees that the Fiscal Agent pursuant to the Fiscal Agency Agreement shall record the date and amount of each payment and Advance under the Note and shall maintain the books and records of all Advances and Conversion Date Advances for each Principal Due Date, interest rates on Advances, payments, and Principal Amounts outstanding for each Principal Due Date. On and after the Conversion Date, the Borrower agrees that the Trustee pursuant to the Trust Agreement will maintain the books and records of all payments on the Note and all Principal Amounts and interest rates on such Principal Amounts (each as to be set forth on Schedule P&I to the Note). No advances of any kind may be made on the Note after its Conversion Date.

- B. **Borrower's Requests for Advances.** All requests for Advances or Conversion Date Advances by the Borrower under the Note shall: be in writing; specify the amount of the Advance requested; identify the Note by Borrower, number and Maximum Commitment Amount; be addressed to the Secretary at the address for notices specified in paragraph 12(f) of this Contract; be signed by an authorized official of the Borrower; and otherwise be in the form prescribed by the Secretary. Advances and Conversion Date Advances shall be requested and will only be approved and made in increments of not less than \$1,000 for any Principal Due Date. A request for an initial Advance under a Note, or a request for a Conversion Date Advance, shall be received by the Secretary at least ten Business Days prior to the Borrower's proposed Funding Date or Conversion Date, as applicable. All other requests for Advances shall be received by the Secretary not less than five Business Days prior to the proposed Funding Date. The Borrower may not deliver a Note or a request for an Advance or Conversion Date Advance to the Secretary more than two calendar months prior to the Borrower's proposed Funding Date. At least two Business Days prior to the proposed Funding Date or Conversion Date

if the Borrower's request was timely received, or the next available Funding Date for which the request was timely received, the Secretary shall, except as otherwise provided in paragraph 11(c) or 12 hereof, deliver a corresponding Authorization Order or Advance Order (as applicable) to the Fiscal Agent in accordance with Section 2.03 or 2.04 of the Fiscal Agency Agreement for the applicable Funding Date or Conversion Date. If the Borrower requests an Advance or Conversion Date Advance of less than the outstanding Maximum Commitment Amount under the Note, the Borrower may also specify in its written request the amount of the Advance or Conversion Date Advance to be allocated to each Commitment Amount or Principal Amount per Principal Due Date under the Note. If the Borrower does not specify how the Advance or Conversion Date Advance should be allocated among Commitment Amounts/Principal Due Dates, the Borrower hereby authorizes the Secretary to direct the Fiscal Agent to allocate the Advance to the respective Commitment Amounts or Principal Amounts in order of the earliest Principal Due Date(s).

- C. **Guarantee Fee.** The Borrower shall pay to the Secretary a fee equal to 2.23% of each Advance to offset the credit subsidy cost of the guaranteed loan. This fee which was announced on October 5, 2018, 83 Fed. Reg. 50257, for Section 108 loan guarantee disbursements under loan guarantee commitments awarded in FY 2019 is due to the Secretary no later than the time of the disbursement of each Advance to the Borrower. The fee is payable from allocations or grants which have been made to Borrower under Section 106 of the Act (including program income derived therefrom) or from other sources, but is only payable from Guaranteed Loan Funds if the fee is deducted from the Advance.
- D. **Conversion; Public Offering.** On the Conversion Date (if any), trust certificates backed by the Note (and similar notes issued by other Section 108 borrowers) will be purchased for a purchase price of the full principal amount thereof by underwriters selected by the Secretary (the "Underwriters") pursuant to an Underwriting Agreement between the Underwriters and the Secretary, at a closing on such Conversion Date as determined by the Secretary and the Underwriters. The Borrower agrees that the interest rate at which the trust certificate of a specified maturity is sold to the Underwriters shall govern the

interest rate inserted on the Conversion Date in Schedule P&I of the Note for the Principal Amount of corresponding maturity.

- E. **Consents.** By execution of this Contract, the Borrower ratifies and consents to the Secretary's selection of the Underwriters and authorizes the Secretary to negotiate with the Underwriters the terms of the Underwriting Agreement and of the public offering of interests in the trust certificates to investors (including the applicable interest rates). In addition, by execution hereof the Borrower ratifies and consents to the Secretary's selection of the Fiscal Agent/Trustee and agrees to the respective terms of the Fiscal Agency/Trust Agreements. If Advances have been made in the Maximum Commitment Amount of the Note not less than ten Business Days prior to the proposed Conversion Date, or if the Borrower requests a Conversion Date Advance, the Borrower authorizes the Secretary to deliver Schedule P&I to the Note completed in accordance herewith to the Fiscal Agent/Trustee on the Conversion Date in accordance with the Fiscal Agency/Trust Agreements, concurrent with delivery of the Secretary's Guarantee of the trust certificates at the closing on the Conversion Date, and thereafter the Note shall be enforceable in accordance with its terms including Schedule P&I. In addition, the Secretary reserves the right to notify the Borrower not less than ninety (90) calendar days in advance of a specified Conversion Date that the Note will be sold to the Underwriters on such date, if the Secretary in his sole discretion determines that market conditions or program needs require the participation in the proposed public offering of all or substantially all Borrowers with outstanding Advances.

PART II**1. Receipt, Deposit and Use of Guaranteed Loan Funds.**

(a) Except for funds deducted on the Conversion Date pursuant to paragraph 4(b) and fees and charges deducted by the Fiscal Agent/Trustee pursuant to paragraph 4(a), the Guaranteed Loan Funds shall be electronically transferred in accordance with the Borrower's instructions for deposit in a separate, identifiable account (the "Guaranteed Loan Funds Account") with a financial institution whose deposits or accounts are Federally insured. The Guaranteed Loan Funds Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Deposit Account" (**Attachment 1**) and shall be continuously maintained for the Guaranteed Loan Funds. Such Letter Agreement must be executed when the Guaranteed Loan Funds Account is established, and an original of this Letter Agreement, signed by the Borrower and the financial institution shall be submitted by the Borrower to the Secretary with this signed Contract.

The Borrower shall make withdrawals from said account only for payment of the costs of approved Section 108 activities, for transfer to the Loan Repayment Account or for the temporary investment of funds pursuant to this paragraph 1(a). Such temporary investment of funds into the Guaranteed Loan Funds Investment Account shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Guaranteed Loan Funds Account. At that time, any balance of funds in the Guaranteed Loan Funds Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof, held in the Guaranteed Loan Funds Investment Account.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with the cash requirements of the approved activities. In no event shall the investments mature on or after December 31, 2020, or have maturities which exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Guaranteed Loan Funds Investment Account") established

and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Investment Account" (**Attachment 2**), which account shall be maintained for all Government Obligations purchased with funds from the Guaranteed Loan Funds Account. The Guaranteed Loan Funds Investment Account need only be established if and when the Borrower is required to invest, or otherwise invests, the Guaranteed Loan Funds in Government Obligations. Such Letter Agreement must be executed when the Guaranteed Loan Funds Investment Account is established. All proceeds and income derived from such investments shall be returned to the Guaranteed Loan Funds Account.

All funds in the Guaranteed Loan Funds Account or the Guaranteed Loan Funds Investment Account must be withdrawn and disbursed by the Borrower for approved activities by December 31, 2020. Any funds remaining in either Account after this date shall be immediately transferred to the Loan Repayment Account established pursuant to paragraph 6 of this Contract.

(b) The Borrower shall by the fifteenth day of each month provide the Secretary with an electronic copy of a statement showing the balance of funds in the Guaranteed Loan Funds Account and the withdrawals from such account during the preceding calendar month, and an electronic copy of a statement identifying the obligations and their assignments in the Guaranteed Loan Funds Investment Account. Borrower shall email the electronic copies to 108reports@hud.gov.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Guaranteed Loan Funds and Guaranteed Loan Funds Investment Accounts shall immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligations of the Borrower under this Contract or the Fiscal Agency/Trust Agreements.

2. **Payments Due on Note; Final Payment and Discharge.** The Borrower shall pay to the Fiscal Agent/Trustee, as collection agent for the Note, all amounts due pursuant to the terms of the Note. In accordance with the Note and the Fiscal Agency/Trust Agreements, payment shall be made

by 3:00 P.M. (New York City time) on the seventh Business Day (the "Note Payment Date") preceding the relevant Interest Due Date or Principal Due Date (each as defined in the Note). If any Note Payment Date falls on a day that is not a Business Day, then the required payment shall be made on the next Business Day. Payment may be made by check or wire transfer.

Upon final payment of all amounts due to Holders under the Note, including any payment made by the Secretary pursuant to the Guarantee, the Fiscal Agent/Trustee is required by the Fiscal Agency/Trust Agreements to return the Note to the Secretary. Upon final payment to the Secretary of any amounts due as a result of Guarantee Payments or otherwise due under this Contract, the Secretary will cancel and return the Note to the Borrower in discharge of the Borrower's obligations under the Note.

3. **Selection of New Fiscal Agent or Trustee.** The Secretary shall select a new Fiscal Agent or Trustee if the Fiscal Agent or Trustee resigns or is removed by the Secretary. The Borrower hereby consents in advance to any such selection and to any changes in the Fiscal Agency/Trust Agreements agreed to by any Fiscal Agent or Trustee and the Secretary, subject to paragraph 4(e) of this Contract.
4. **Payments Due Fiscal Agent or Trustee; Documents to the Secretary.**

(a) The Borrower agrees to pay the fees of the Fiscal Agent as required by Exhibit G to the Fiscal Agency Agreement, and any additional amounts that may be due pursuant to Section 6.01 of the Fiscal Agency Agreement. If not paid by the Borrower by any other means prior thereto, the Borrower agrees that any such fees or additional amounts that have been incurred prior to an Advance or a Conversion Date Advance may be deducted by the Fiscal Agent/Trustee from the proceeds of the Advance or Conversion Date Advance, as applicable.

(b) The Borrower agrees to pay the Borrower's share, as determined by the Secretary, of the customary and usual issuance, underwriting, and other costs related to the public offering and future administration of the Note and the trust certificates, as approved by the Secretary, including the cost of reimbursement and/or compensation of the Trustee pursuant to the Trust Agreement, including

Sections 3.11 and 7.01 thereof. In connection with the public offering on the Conversion Date, such payment shall either be made by wire transfer to the Trustee on the day prior to the Conversion Date or shall be deducted from the Guaranteed Loan Funds on the Conversion Date.

(c) The Borrower shall submit to the Secretary not later than ten Business Days prior to the Funding Date for the initial Advance hereunder, or if not submitted earlier, prior to any Conversion Date or Public Offering Date applicable to the Note, this executed Contract, the executed Note, a request for an Advance or a Conversion Date Advance (as applicable) in proper form, and an opinion acceptable to the Secretary from the Borrower's counsel to the effect that: (i) the governing body of the Borrower has authorized by resolution or ordinance, in accordance with applicable State [commonwealth] and local law, the issuance of the Note and the execution of this Contract; (ii) the Note and this Contract are valid, binding, and enforceable obligations of the Borrower; (iii) the pledge of funds pursuant to 24 CFR 570.705(b)(2) and paragraph 5(a) of this Contract is valid and binding; and (iv) there is no outstanding litigation that will affect the validity of the Note or this Contract. In addition, the Borrower shall submit any other additional documents or opinions specifically required by this Contract (e.g., paragraph 5(c), or paragraph 15, *et seq.*), at the time required thereby.

(d) The Borrower agrees to reimburse the Underwriters upon demand by the Secretary for the Borrower's share, as determined by the Secretary, of all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) incurred in connection with a proposed public offering, if the Underwriters incur such additional costs for the public offering because of any refusal, inability, or failure on the part of the Borrower timely to submit in acceptable form any document required by this Contract (including paragraph 4(c)), or because of any withdrawal by the Borrower from the public offering, after the Borrower has submitted a request for a Conversion Date Advance hereunder. By execution and delivery of this Contract to the Secretary, the Borrower hereby expressly authorizes the Secretary to pay amounts due under this paragraph from funds pledged under paragraph 5(a) of this Contract.

(e) The undertakings in paragraphs 3 and 4 of this Contract are expressly subject to the requirement that the Fiscal Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses, or any indemnification by the Borrower from any source other than funds pledged pursuant to paragraphs 5 or 15 *et seq.* of this Contract.

5. **Security.** The Borrower hereby pledges as security for repayment of the Note, and such other charges as may be authorized in this Contract, the following:
- (a) All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q).
 - (b) Program income, as defined at 24 CFR 570.500(a) (or any successor regulation), directly generated from the use of the Guaranteed Loan Funds.
 - (c) Other security as described in paragraph 15, *et seq.*
 - (d) All proceeds (including insurance and condemnation proceeds) from any of the foregoing.
 - (e) All funds or investments in the accounts established pursuant to paragraphs 1 and 6 of this Contract.
6. **Loan Repayment Account.**
- (a) All amounts pledged pursuant to paragraphs 5(b) and 5(d) of this Contract shall be deposited immediately on receipt in a separate identifiable account (the "Loan Repayment Account") with a financial institution whose deposits or accounts are Federally insured. The Loan Repayment Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Deposit Account" (**Attachment 1**) and shall be maintained for such pledged funds. The Loan Repayment Account need only be established if and when the Borrower receives amounts pledged pursuant to paragraph 5(b) or 5(d). Such Letter Agreement must be executed when the Loan Repayment Account is established, and an original of this Letter Agreement, signed by the Borrower and the financial institution shall

be submitted by the Borrower to the Secretary with this signed Contract. Borrower shall make withdrawals from said account only for the purpose of paying interest and principal due on the Note (including the purchase of Government Obligations in accordance with paragraph 10 hereof), for payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or for the temporary investment of funds pursuant to this paragraph, until final payment and discharge of the indebtedness evidenced by the Note, unless otherwise expressly authorized by the Secretary in writing. Such temporary investment of funds shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Loan Repayment Account. At that time, the balance of funds in the Loan Repayment Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with cash requirements for payment of principal and interest as required under the Note. In no event shall the maturities of such investments exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Loan Repayment Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Investment Account" (**Attachment 2**), which account shall be maintained for all Government Obligations purchased with funds from the Loan Repayment Account. Such Letter Agreement must be executed when the Loan Repayment Investment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) All proceeds and income derived from such investments shall be returned to the Loan Repayment Account.

(b) Borrower shall by the fifteenth day of each month, provide the Secretary with an electronic copy of a statement showing the balance of funds in the Loan Repayment Account and the deposits and withdrawals of all funds in such account during the preceding calendar month and an electronic copy of a statement identifying the obligations

and their assignments in the Loan Repayment Investment Account. Borrower shall email the electronic copies to 108reports@hud.gov.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Note, all right, title, and interest of the Borrower in and to the Loan Repayment and Loan Repayment Investment Accounts shall immediately vest in the Secretary for use in making payment on the Note, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements.

7. **Use of CDBG, EDI or BEDI Funds for Repayment.** Any funds available to the Borrower under Section 106 of the Act (including program income derived therefrom) are authorized to be used by the Borrower for payments due on the Note, Optional Redemption (as defined in the Note), payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or the purchase of Government Obligations in accordance with paragraph 10. Any funds specifically available to the Borrower for such payments or as a debt service reserve under an EDI or BEDI Grant Agreement pursuant to Section 108(q) of the Act which supports the eligible project(s) and activities financed by the Note may also be used therefor; any other use of Section 108(q) funds for such purposes shall require the prior written approval of the Secretary. Unless otherwise specifically provided herein or unless otherwise expressly authorized by the Secretary in writing, the Borrower shall substantially disburse funds available in the Loan Repayment or the Loan Repayment Investment Accounts before funds from grants under Section 106 of the Act are withdrawn from the U.S. Treasury for such purposes.
8. **Secretary's Right to Restrict Use of CDBG Funds to Repayment.** Upon a determination by the Secretary that payments required by paragraph 2 and/or paragraph 4 of this Contract are unlikely to be made as specified, the Secretary may give the Borrower notice that the availability to the Borrower of funds pledged under paragraph 5(a) of this Contract for purposes other than satisfaction of the pledge is being restricted. This restriction shall be in an amount estimated by the Secretary to be sufficient to ensure that the payments

referred to in paragraph 2 and/or paragraph 4 hereof are made when due. This restriction may be given effect by conditioning the restricted amounts to prohibit disbursement for purposes other than satisfaction of the pledge at the time such restricted funds are approved as grants, by limiting the Borrower's ability to draw down or expend the restricted funds for other purposes, and by disapproving payment requests submitted with respect to such grants for purposes other than satisfaction of the pledge.

9. **Secretary's Right to Use Pledged Funds for Repayment.** The Secretary may use funds pledged under paragraph 5(a) of this Contract or funds restricted under grants pursuant to paragraph 8 of this Contract to make any payment required of the Borrower under paragraph 2 and/or paragraph 4, if such payment has not been timely made by the Borrower.
10. **Defeasance.** For purposes of this Contract, after the Conversion Date the Note shall be deemed to have been paid (defeased) if there shall have been deposited with the Trustee either moneys or Government Obligations (as defined below), which in the sole determination of the Secretary, mature and bear interest at times and in amounts sufficient, together with any other moneys on deposit with the Trustee for such purpose, to pay when due the principal and interest to become due on the Note. The Aggregate Principal Amount of the Note or any unpaid Principal Amount may be so defeased, in whole or in part, as of any Interest Due Date, or any other Business Day acceptable to both HUD and the Borrower. In accordance with the Note and the Trust Agreement, the Borrower shall give timely notice and written instructions to the Secretary and the Trustee concerning any principal amounts proposed to be defeased, including any Optional Redemptions proposed, which instructions shall be approved by the Secretary. If the unpaid Aggregate Principal Amount of the Note guaranteed pursuant to this Contract shall be defeased and deemed to have been paid in full, then the Borrower shall be released from all agreements, covenants, and further obligations under the Note.

"Government Obligation" means a direct obligation of, or any obligation for which the full and timely payment of principal and interest is guaranteed by, the United States of America, including but not limited to, United States Treasury Certificates of Indebtedness, Notes and Bonds -

State and Local Government Series or certificates of ownership of the principal of or interest on direct obligations of, or obligations unconditionally guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System and has capital and surplus (exclusive of undivided profits) in excess of \$100,000,000.

11. **Default.** (a) A Default under the Note and this Contract shall occur upon failure by the Borrower to:

(i) pay when due an installment of principal or interest on the Note; or (ii) punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in: A) this Contract, (B) any security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by the Note, or (C) any future amendments, modifications, restatements, renewals, or extensions of any such documents.

(b) The Borrower waives notice of Default and opportunity for hearing with respect to a Default under paragraph 11(a).

(c) In addition to Defaults under paragraph 11(a), the Secretary may declare the Note in Default if the Secretary makes a final decision in accordance with the provisions of section 111 of the Act and 24 CFR 570.913 (or any successor provisions), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with title I of the Act. Notwithstanding any other provision, following the giving of such reasonable notice, the Secretary may, in the Secretary's sole discretion pending the Secretary's final decision, withhold the guarantee of any or all obligations not yet guaranteed on behalf of the Borrower under outstanding commitments, suspend approval of any further Advances or Conversion Date Advances under the Note, and/or direct the Borrower's financial institution to: refuse to honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account initiated by the Borrower, and/or refuse to release obligations and assignments by the Borrower from the Guaranteed Loan Funds

Investment Account or the Loan Repayment Investment Account.

12. **Remedial Actions.** Upon a Default or declaration of Default under this Contract, the Secretary may, in the Secretary's sole discretion, take any or all of the following remedial actions:
- (a) With any funds or security pledged under this Contract, the Secretary may: (i) continue to make payments due on the Note, (ii) make a prepayment under Section I.D. of the Note or make an acceleration payment with respect to the principal amount of the Note subject to Optional Redemption as provided in Section III of the Note, (iii) purchase Government Obligations in accordance with paragraph 10 of this Contract, (iv) pay any interest due for late payment as provided in the Note, this Contract, or the Fiscal Agency/Trust Agreements, (v) pay any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, and/or (vi) pay any reasonable expenses incurred by the Secretary or the Fiscal Agent/Trustee as result of the Borrower's Default.
 - (b) The Secretary may withhold the guarantee of any or all obligations not yet guaranteed or the disbursement of any or all grants not yet disbursed in full under outstanding guarantee commitments or grant approvals for the Borrower under Sections 108 and/or 106 of the Act.
 - (c) The Secretary may withhold approval of any or all further Advances or Conversion Date Advances under the Note (if applicable); direct the Borrower's financial institution to refuse to: honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account by the Borrower, and/or to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account; and/or direct the Borrower and/or the Borrower's financial institution to transfer remaining balances from the Guaranteed Loan Funds Account to the Loan Repayment Account.
 - (d) Until the Conversion Date, or with respect to amounts subject to Optional Redemption, the Secretary may accelerate the Note.
 - (e) The Secretary may exercise any other appropriate

remedies or sanctions available by law or regulation applicable to the assistance provided under this Contract, or may institute any other action available under law to recover Guaranteed Loan Funds or to reimburse the Secretary for any payment under the Secretary's Guarantee or any reasonable expenses incurred by the Secretary as a result of the Default.

(f) All notices and submissions provided for hereunder shall be in writing (including by telex, telecopier or any other form of facsimile communication) and mailed or sent or delivered, as to each party hereto, at its address set forth below or at such other address as shall be designated by such party in a written notice to the other party hereto. All such notices and other communications shall be effective when received as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or five Business Days after deposit in the mail, postage prepaid; (iii) if sent by telex, upon receipt by the sender of an answer back; and (iv) if sent by telecopier, upon receipt.

The Secretary:

U.S. Dept. of Housing and Urban Development
Attention: Paul Webster, Director
Financial Management Division
451 7th Street SW, Room 7282
Washington, DC 20410

Borrower:

City of Texarkana, Arkansas
Attn: Tracie Lee, Assistant Director of Public Works
P.O. Box 2711
Texarkana, AR 75504

13. **Limited Liability.** Notwithstanding any other provision of this Contract, the Fiscal Agency/Trust Agreements or the Note, any recovery against the Borrower for any liability for amounts due pursuant to the Note, the Fiscal Agency/Trust Agreements or this Contract shall be limited to the sources of security pledged in paragraph 5 or any Special Conditions of this Contract. Neither the general credit nor the taxing power of the Borrower, or of the State in which the Borrower is located, is pledged for any payment due under the Note, the Contract, or the Fiscal Agency/Trust Agreements.

14. **Incorporated Grant Agreement.** The Contract and the Note are hereby incorporated in and made a part of the Grant Agreement authorized by the Secretary on July 20, 2018 under the Funding Approval for grant number B-18-MC-05-0007 to the Borrower. In carrying out activities with the Guaranteed Loan Funds hereunder, the Borrower agrees to comply with the Act and 24 CFR Part 570, as provided in Subpart M thereof.

15. **Special Conditions and Modifications:**

(a) As provided for in paragraph 5(c) and (d) of this Contract, the Borrower pledges the following security to secure the repayment of the Note and all other charges authorized in this Contract and in all related future contracts or amendments between Borrower and the Secretary pertaining to the Note:

(i) A sole first priority lien in the name of the Secretary on the revenues derived from fees and charges levied and collected by the Borrower for collection and disposal of solid wastes authorized by Ark. Code Ann. § 8-6-211 and ordinances adopted by the Borrower, codified at Sections 22-1 through 22-101 of the Code of Ordinances of the City of Texarkana, Arkansas (the "Revenues");

The Borrower shall pledge and assign this security in one more appropriate instruments, which shall contain any provisions the Secretary deems necessary.

The Borrower shall take all steps necessary to attach, perfect, and maintain the perfection and priority of the Secretary's lien, assignment, and security interests.

(b) Borrower covenants and agrees:

(i) To maintain fees and charges at a level sufficient to produce annual Revenues, available for payment of principal and interest under the Note, at least equal to \$90,000.

(ii) To deliver to the Secretary, contemporaneously with the delivery of this Contract and Note,

(1) a copy of the instrument that creates and attaches, in the Secretary's favor, the security interest in the Revenues as provided in paragraph 15(a), and (2) an opinion of Borrower's counsel on its letterhead, addressed and satisfactory to the Secretary, that instrument provided in response to this subparagraph creates in the Secretary's favor, a valid, binding, and enforceable perfected security interest in the Revenues in accordance with applicable state and local laws.

- (c) Guaranteed Loan Funds shall be used by the Borrower for the following activities in connection with the Texarkana Recreational Facility Project (the "Project"), as described in the Borrower's HUD-approved application for loan guarantee assistance:
- (i) Construction, reconstruction, rehabilitation or installation of public facilities, under 24 CFR 570.703(1), to the extent eligible under 24 CFR 570.201(c). The Borrower shall not use funds as described in the Borrower's application for activities ineligible under 24 CFR 570.207(b)(1)(iii) and (b)(2).
- (d) Paragraph 12 is amended by adding at the end thereof the following language:
- “(g) The Secretary may exercise any appropriate remedies to enforce the lien on the Revenues.”
- (e) If any one or more of the covenants, agreements, provisions, or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract or of the Note or the rights of the Holder thereof.
- (f) Additional Grounds for Default. Notice of Default. Restriction of Pledged Grants. Availability of Other Remedial Actions.

- (i) The Borrower acknowledges and agrees that the Secretary's guarantee of the Note is made in reliance upon the availability of grants pledged pursuant to paragraph 5(a) (individually, a "Pledged Grant" and, collectively, the "Pledged Grants") in any Federal fiscal year subsequent to the Federal fiscal year ending September 30, 2018 to: (A) pay when due the payments to become due on the Note, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Note. The Borrower further acknowledges and agrees that if the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are unlikely to be available for either of such purposes, such determination shall be a permissible basis for any of the actions specified in paragraphs (ii) and (iii) below (without notice or hearing, which the Borrower expressly waives).
 - (ii) Upon written notice from the Secretary to the Borrower at the address specified in paragraph 12(f) above that the Secretary (in the Secretary's sole discretion) has determined that Pledged Grants are unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above (such notice being hereinafter referred to as the "Notice of Impaired Security"), the Secretary may limit the availability of Pledged Grants by withholding amounts at the time a Pledged Grant is approved or by disapproving payment requests (drawdowns) submitted with respect to Pledged Grants.
 - (iii) If after 60 days from the Notice of Impaired Security the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are still unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above, the Secretary may declare the Note in Default and exercise any and all remedies available under paragraph 12. This paragraph (iii) shall not affect the right of the Secretary to declare the Note and/or this Contract in Default pursuant to paragraph 11 and to exercise in connection therewith any and all remedies available under paragraph 12.
- (g) All notices and submissions provided for hereunder

shall be submitted as directed in paragraph 12(f) above, including the Secretary's notice to Borrower under Part I.E. not less than ninety (90) calendar days in advance of a specified Conversion Date that the Note will be sold to the Underwriters on such date, if the Secretary in his sole discretion determines that the market conditions or program needs require the participation in the proposed public offering of all or substantially all Borrowers with outstanding Advances.

- (h) The Secretary consents to Borrower's redemption of the Note at any time on or before the Conversion Date, in whole or in part, at the purchase price of one hundred percent (100%) of the unpaid Principal Amount to be redeemed, plus accrued interest thereon to the date of redemption, if Borrower gives notice of its intention to redeem the Note, in accordance with Section I.D. of the Note, to the Secretary and the Fiscal Agent not less than fourteen calendar days prior to the date on which Borrower intends to redeem the Note.

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THE UNDERSIGNED, as authorized officials on behalf of the Borrower or the Secretary, have executed this Contract for Loan Guarantee Assistance, which shall be effective as of the date of execution hereof on behalf of the Secretary.

City of Texarkana, Arkansas
BORROWER

BY: _____
(Signature)

(Name)

(Title)

(Date)

**SECRETARY OF HOUSING AND URBAN
DEVELOPMENT**

BY: _____
(Signature)

Virginia Sardone

(Name)

**Acting Deputy Assistant Secretary
for Grant Programs**

(Title)

(Date)