

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF IMPROVEMENTS AND BETTERMENTS TO THE SEWER SYSTEM OF THE CITY OF CLINTON, ARKANSAS; AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS, SERIES 1986, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$961,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF THE CONSTRUCTION; PROVIDING FOR PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Clinton, Arkansas (the "City"), owns a water and sewer system which is operated as a single integrated municipal undertaking (the "System"); and

WHEREAS, the City Council (the "Council") of the City has determined to construct improvements and betterments to the System (the "Project") and has caused to be filed with the City Recorder preliminary plans and specifications and an estimate of the costs of constructing the Project, all prepared by a duly qualified engineer chosen by the Council; and

WHEREAS, according to the above mentioned estimate, the cost of constructing the Project will be approximately \$1,626,000, including engineering, legal costs, and other expenses incidental to the issuance of bonds hereinafter authorized, which report has been examined and approved by the Council; and

WHEREAS, it is proposed that Project costs will be financed by the issuance of the City's water and sewer revenue bonds in the aggregate principal amount of \$961,000, a grant from the Arkansas Industrial Development Commission and a loan from the Arkansas Soil & Water Conservation Commission in the amount of \$150,000; and

WHEREAS, the City is authorized under Act No. 131 of the Acts of the General Assembly of the State of Arkansas for the year 1933, as amended ("Act 131"), to issue and sell revenue bonds for the purpose of financing the cost of constructing extensions, betterments, and improvements to the waterworks system of the City and is authorized under Act No. 132 of the Acts of the General Assembly of the State of Arkansas for the year 1933, as amended ("Act 132"), to issue and sell revenue bonds for the purpose of financing the cost of constructing a sewer system for the City, including printing, legal, and other expenses incident to the issuance of such bonds; and

WHEREAS, the City has outstanding an issue of Water and Sewer Revenue Bonds authorized by Ordinance No. 69A, adopted January 7, 1964, ("Ordinance 69A"); an issue of Water and Sewer Revenue Bonds authorized by Ordinance No. 91, adopted September 23, 1971 ("Ordinance 91"); an issue of Water and Sewer Revenue Bonds authorized by Ordinance No. 101, adopted April 2, 1976 ("Ordinance 101"); and an issue of Water and Sewer Revenue Bonds authorized by Ordinance 112, adopted February 1, 1978 (Ordinance 112)(Collectively the "Prior Bonds"); and

WHEREAS, to provide a portion of the funds necessary to finance construction of the Project, the City has determined to issue \$961,000 of Water and Sewer Revenue Bonds, Series 1986 (the "Bonds"); and

WHEREAS, at a special election held June 24, 1986, a majority of the qualified electors of the City voting on the question approved the issuance of the Bond; and

WHEREAS, pursuant to authority contained in Act 132 and Act 133, the City has entered into a Loan Agreement with the United States Department of Agriculture, Farmers Home Administration (the "FmHA"), whereby the FmHA will purchase the Bonds at a price of par plus accrued interest;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLINTON, ARKANSAS, as follows:

Section 1. Definitions. In addition to the terms defined in the preamble to this Ordinance the terms below shall have the following meanings:

"Accountant" means an independent certified public accountant selected from time to time by the City who may be the accountant or firm of accountants which regularly audits the books of the City.

"Code" means the Internal Revenue Code of 1954, as now or hereafter amended, and applicable regulations issued or proposed thereunder.

"Consulting Engineer" means an independent engineer or firm of engineers having recognized experience in municipal water and sewer systems selected from time to time by the City.

"FDIC" means the Federal Deposit Insurance Corporation.

"Investment Obligations" means, if and to the extent the same are legal investments for System moneys:

(a) Direct obligations of, or obligations which are unconditionally guaranteed as to the payment of principal and interest by, the United States of America; or

(b) Deposits of any commercial bank which is a member of the FDIC, provided:

- (i) such deposits are fully insured by the FDIC; or
- (ii) to the extent not so insured, are secured by a pledge of securities described in (a) above.

"Net Revenues" means, for any period, Revenues less Operating Expenses.

"Operating Expenses" means, for any period, all ordinary and necessary expenses of operation, repair, maintenance and insuring of the System under generally accepted accounting principals. Fixed annual charges, such as insurance premiums and major repair or maintenance expenses, shall be pro-rated on an annual basis for the purpose of calculating Operating Expense for any period.

"Revenues" means all fees, tolls, rates, rentals and charges levied and collected in connection with and all other income and receipts of whatever kind or character derived by the City from the operation of the System. Notwithstanding the foregoing, Revenues shall not include contributions or grants received by the City.

Section 2. Sale of Bonds/Construction of Project. 1. All actions heretofore taken by the City in connection with the offer and sale of the Bonds are in all respects ratified and approved and there is hereby authorized and directed the sale of the Bonds to the FmHA at a price of par plus accrued interest.

2. The construction of the Project, in accordance with the plans hereinbefore described, is hereby authorized and directed. The Mayor and City Recorder shall take, or cause to be taken, all action necessary to accomplish the construction of the Project, including the execution of all required contracts.

3. The Council hereby finds and declares that the period of usefulness of the Project after completion thereof will be more than forty (40) years.

Section 3. Authorization and Terms of Bonds. 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Act 131, Act 132, and applicable decisions of the Supreme Court of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2d 12 (1946), there is hereby authorized the issuance of bonds of the City to be designated as "Water and Sewer Revenue Bonds, Series 1986" in the principal amount of Nine Hundred

Sixty-One Thousand Dollars (\$961,000) (the "Bonds"). The Bonds shall be special obligations of the City secured solely by an equal charge and lien on the Net Revenues as described in this Ordinance. The pledge of and lien on Net Revenues securing the Bonds shall be subordinate and subject to that securing the Prior Bonds.

2. The Bonds shall bear interest at the rate of five percent (5%) per annum, with interest only payable for the first twenty-four months following the date thereof, and with principal and interest payable in monthly amortized installments Four Thousand Seven Hundred Nineteen Dollars (\$4,719) beginning the twenty-fifth month following the date thereof, until the face amount of the Bonds plus interest thereon is fully paid, except that the final payment of the entire indebtedness if not sooner paid shall be due and payable forty (40) years from the date of the Bonds.

3. The Bonds shall be dated as of the date of their delivery and shall be issued in fully registered typewritten form without interest coupons. The Bonds shall be issued as one bond No. R-1 and shall be registered as to principal and interest by the City Recorder in a bond registration book and a certificate of such registration shall be endorsed on the Bonds.

4. Payment of principal and interest on the Bonds shall be by check or draft mailed to the registered owner thereof, without presentation or surrender (except upon final payment), and such payments shall discharge the obligation of the City to the extent thereof. The City Recorder shall keep a record of all payments of principal and interest. Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the Bonds have been fully paid, the Bonds shall be cancelled and delivered to the City Recorder.

5. The Bonds shall be executed on behalf of the City by the Mayor and City Recorder and shall have impressed thereon the seal of the City.

6. The Bonds shall be subject to redemption prior to maturity in accordance with the provisions pertaining thereto appearing in the form of bond hereinafter set forth in this Ordinance. Bonds shall be redeemed only from and to the extent funds on deposit in the Bond Fund are available and sufficient for such purpose.

7. Pending the preparation and delivery of the permanent and definitive bonds herein authorized, one or more interim certificates of indebtedness not to exceed the aggregate principal amount of said bonds may be issued for the purpose of

providing construction funds immediately and in anticipation of the issuance of such permanent and definitive bonds. The interim certificates shall be in such denomination or denominations as the Council shall determine, be dated the date of delivery, bear interest at the bond rate, or if issued to evidence loan funds obtained on an interim basis at such loan rate, and be payable on or before three (3) years after their date. Upon delivery of the permanent and definitive Bonds, the interim certificates, to the extent then outstanding with accrued interest, shall be exchanged for, or paid from the proceeds of the Bonds.

8. The Bonds are not general obligations of the City but are special obligations, the principal of and interest on which are secured by a pledge of and are payable from the Net Revenues of the System. The Bonds and interest thereon shall not constitute an indebtedness within any constitutional or statutory debt limitation or restriction.

Section 4. Bond Form. The Bonds and interim certificates of indebtedness shall be in substantially the following form and the Mayor and City Clerk are hereby authorized and directed to make all recitals contained therein:

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF VAN BUREN
CITY OF CLINTON
WATER AND SEWER REVENUE BOND,
SERIES 1986

NO. R-1

\$961,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Clinton (the "City"), in the County of Van Buren, and State of Arkansas, hereby acknowledges itself to owe, and for value received promises to pay to the registered owner, or assigns, but solely from the special fund provided therefor as hereinafter set forth, the principal sum of

NINE HUNDRED SIXTY-ONE THOUSAND DOLLARS

plus interest on the unpaid balance at the rate of five percent (5%) per annum from the date hereof. The said principal and interest shall be payable in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of debts due in the United States of America and shall be payable in the following installments on or before the following dates: Interest only on the ____

day of the first twenty-four months following the date of this bond; and Four Thousand Seven Hundred Nineteen Dollars (\$4,719) on the _____ day of the twenty-fifth month following the date of this bond and monthly thereafter on the same date of each month (except that if this bond is dated the 29th, 30th, or 31st of any month, the monthly payment shall be due on the 28th day of each month) until principal and interest are fully paid, except that the final installment on the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable forty (40) years from the date of this bond.

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the registered owner at his address shown on the bond registration book of the City maintained by the City Recorder as Bond Registrar, and such payments shall fully discharge the obligations of the City to the extent made.

This bond is issued for the purpose of aiding in the construction of improvements and betterments to the water and sewer system of the City (the "System") under and pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Act No. 131 of the General Assembly of the State of Arkansas of the year 1933, as amended, as construed by the Arkansas Supreme Court in the case of City of Harrison v. Braswell, decided April 15, 1946, and Act No. 132 of the General Assembly of the State of Arkansas of the year 1933, as amended, and pursuant to Ordinance No. _____ of the City duly adopted on the _____ day of _____, 1986 (the "Ordinance"). Reference is hereby made to the Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the registered owner of this bond.

This bond does not constitute an indebtedness of the City within any constitutional or statutory limitation or provision, and the taxing power of the City or the State of Arkansas or any other subdivision thereof is not pledged to the payment of the principal of or interest on this bond. This bond is a special obligation payable solely from net revenues derived from the operation of the System in excess of the debt service requirements for the City's Water and Sewer Revenue Bonds authorized by Ordinance No. 69A, adopted January 7, 1964, Water and Sewer Revenue Bonds authorized by Ordinance No. 91, adopted September 23, 1971, Water and Sewer Revenue Bonds authorized by Ordinance No. 101, adopted April 2, 1976, and Water and Sewer Revenue Bonds authorized by Ordinance No. 112, adopted February 1, 1978. A sufficient amount of such revenues have been duly set aside and pledged as a special fund for that purpose and identified as the "1986 Water and Sewer Revenue Bond Fund," created by the Ordinance.

In the Ordinance the City has fixed and has covenanted and agreed to maintain rates to be charged for the use of the System sufficient at all times to provide for the payment of System operation and maintenance expenses, provide for the payment of principal of and interest on all outstanding bonds to which System revenues are pledged, to establish and maintain debt service reserves and to establish and maintain a depreciation fund.

This bond is expressly made negotiable under said Acts 131 and 132, and is issued with the intent that the laws of the State of Arkansas shall govern its construction.

By virtue of the authority of said Act 131, there is granted and created a statutory mortgage lien on the waterworks to and in favor of the holder of this bond; and said waterworks shall remain subject to such statutory mortgage lien until the payment in full of this bond, both principal and interest, shall have been made.

This bond may be assigned, and upon assignment the assignor shall promptly notify the City Recorder by registered mail, and the assignee shall surrender this bond to the City Recorder for transfer on the registration books. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the payment record maintained by the City Recorder), prior to such surrender for transfer.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the City. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this bond and shall not affect the obligation of the City to pay the remaining installments as scheduled herein.

IT IS HEREBY CERTIFIED, RECITED, and DECLARED that all acts, conditions, and things required by the Constitution and laws of the State of Arkansas to exist, happen, and be performed precedent to and in the issuance of this bond, have existed, have happened, and have been performed in due time, form, and manner, as required by law, and that sufficient of the income and revenue which is deemed to be derived from the operation of the System has been pledged to and will be set aside into said special fund for the payment of the principal of and interest on this bond; and that the indebtedness represented by this bond and the issue of which it forms a part does not exceed any constitutional or statutory limitations.

This bond shall not become a valid obligation of the City until the Certificate hereto has been duly executed by the Treasurer of the City.

IN WITNESS WHEREOF, the City of Clinton, Arkansas, by its City Council has caused this bond to be signed by the Mayor and City Recorder thereof and sealed with the corporate seal of said City, all as of the _____ day of _____, 1986.

CITY OF CLINTON, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Recorder

(S E A L)

TREASURER'S CERTIFICATE

Certified to be the bond mentioned and described herein.

Treasurer of the City of Clinton,
Arkansas

There shall be printed on the reverse of, or attached to, said bond a registration certificate in substantially the following form:

I, the undersigned, City Recorder within and for the City of Clinton, in Van Buren County, Arkansas, DO HEREBY CERTIFY that the within bond has been registered as to principal and interest as indicated in the registration blank below in a book provided for that purpose and in the manner required by law. The principal of and interest on this bond shall be payable only to the registered owner hereof named in the registration blank below or his legal representative, and this bond shall be

[illegible]

STATE OF ARKANSAS
COUNTY OF VAN BUREN
CITY OF CLINTON
INTERIM CERTIFICATE OF INDEBTEDNESS

\$ _____

_____ DOLLARS (\$_____)

This Certificate is one of a series of _____ (____) Certificates in an aggregate amount not to exceed \$961,000, issued for the purpose of providing construction funds in anticipation of the issuance of permanent and definitive bonds for construction of improvements and betterments to the sewer system of the City in accordance with an Ordinance of the City, adopted _____, 1986. This is a special obligation payable solely from the revenues of the definitive bonds, and it does not constitute an indebtedness of the City within any constitutional or statutory limitation. The City covenants and agrees that on or, at its option, before the maturity date

hereof this and other such certificates, to the extent then outstanding, with accrued interest to date of payment without penalty, shall be exchanged for, or paid from the proceeds of, such permanent and definitive bonds.

IN WITNESS WHEREOF, the City of Clinton, Arkansas has caused this certificate to be signed by the Mayor and City Recorder and sealed with the corporate seal of the City on the _____ day of _____, 1986.

CITY OF CLINTON, ARKANSAS

By: _____
Mayor

ATTEST:

City Recorder

[S E A L]

Section 5. Rate Covenants. The City covenants and agrees that:

(a) Except as provided in Subsection 5(c) below, it will continue in effect the present schedule of rates for water and sewer services established by Ordinance No. 133, adopted April 12, 1984 and by Ordinance No. 143, adopted July 28, 1986 (which ordinances are incorporated herein by this reference) (the "System Rates"). The System Rates are deemed reasonable and necessary minimum rates to be charged.

(b) The System Rates will produce Revenues annually at least sufficient to pay Operating Expenses, pay the principal of and interest on all outstanding bonds to which System revenues are pledged, establish and maintain required debt service reserves, and establish and maintain the depreciation fund at the required level. System Rates shall, as and when necessary, be increased to generate revenues sufficient to satisfy this covenant.

(c) The System Rates shall never be reduced while any Bonds are outstanding, unless there is obtained an Accountant's or Consulting Engineer's opinion stating that, based upon the number of customers and usage reflected by System records, the proposed rates will produce Net Revenues for the succeeding fiscal year equal to at least one hundred twenty percent (120%) of maximum annual debt service requirements on all outstanding bonds to which System revenues are pledged.

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Section 6. Matters Pertaining to Prior Bonds. Except as specifically herein provided, all provisions of Ordinance 69A, Ordinance 91, Ordinance 101 and Ordinance 112 pertaining to the collection and application of System revenues are made applicable to the Bonds and incorporated herein by this reference. Said provisions shall remain in force and effect until the Bonds are paid, or provision made therefor.

Section 7. Revenue Fund. All Revenues shall be promptly deposited to the credit of the Water and Sewer System Revenue Fund established by §8 of Ordinance 69A (the "Revenue Fund"). Moneys in said fund shall first be expended and utilized as set forth in Ordinance 69A, Ordinance 91, Ordinance 101 and Ordinance 112, then as set forth in §8 below.

Section 8. Bond Fund. 1. After payment from the Revenue Fund of all sums required by the Ordinance 69A, Ordinance 91, Ordinance 101 and Ordinance 112 to fund Operating Expenses (by deposits to the Water and Sewer System Operation and Maintenance Fund established by §9 of Ordinance 69A), pay all principal and interest due on the Prior Bonds, fund required debt service reserves, and fund required depreciation fund contributions, there shall be paid by the City Treasurer from the Revenue Fund and deposited into a special fund of the City hereby created and designated "1986 Water and Sewer System Revenue Bond Fund" (the "Bond Fund"), in substantially equal payments, the following amounts:

(a) on the first business day of each month, commencing with the month immediately following the month in which the Bonds are issued, and continuing until the month in which occurs the second anniversary date of the Bonds, a sum equal to the installment of interest next due on the Bonds, plus

(b) beginning on the first business day of the first month following the second anniversary date of the Bonds and continuing until all the principal of the Bonds issued hereunder and the interest thereon have been paid in full, or provision is made therefor, the sum of Four Thousand Seven Hundred Nineteen Dollars (\$4,719), plus

(c) beginning on the first business day of each month, until there shall have accumulated a debt service reserve of Fifty-Six Thousand Six Hundred Twenty-Three Dollars (\$56,623), the sum of Four Hundred Seventy-Two Dollars (\$472); provided, however, that when in any fiscal year no principal of or interest on the Bonds is in default and the amount in the Bond Fund provides a reserve of \$56,623, and so long as the said debt service reserve is so maintained, the additional deposit of \$472 per month may be suspended but shall be resumed in the event the reserve is used for any purpose.

2. If the revenues are insufficient to make the required payment on or before the first business day of any month into the Bond Fund, then the amount of such deficiency shall be added to the amount otherwise required to be paid into the Bond Fund on or before the first day of the next month.

3. If, for any reason, the City Treasurer shall fail to make the required payments into the Bond Fund, or if for any reason the Bond Fund shall be insufficient to make the required payments for principal and interest as due, moneys held in the debt service reserve shall be used to the extent necessary to pay the interest on and principal of the Bonds, but such reserve shall be reimbursed by the monthly payments specified in paragraph 1. above.

4. When moneys in the Bond Fund, including the debt service reserve, are sufficient to pay the principal of and interest on all Bonds then outstanding, the City Treasurer shall suspend further payments into the Bond Fund.

5. If a surplus shall exist in the Bond Fund over and above the amount necessary to insure the payment, when due, of principal and interest on the Bonds and to maintain the debt service reserve in the required amount, such surplus shall be transferred to the Revenue Fund. Except as specifically provided herein, all moneys in the Bond Fund, including the debt service reserve therein, shall be used solely for the purpose of paying the interest on and principal of the Bonds.

6. It shall be the duty of the City Treasurer to withdraw moneys from the Bond Fund on or before the due date of any installment of interest or of principal and interest due on the Bonds and pay to the registered owner, or assigns, an amount equal to such installment. Deposits in the Bond Fund shall be at the sole risk of the City and shall not operate as a payment of the Bonds or interest until so applied.

Section 9. Depreciation Fund. 1. The City shall continue to maintain the Water and Sewer System Depreciation Fund established by §11 of Ordinance 69A for so long as the Bonds remain outstanding and unpaid. Upon the retirement of all outstanding Prior Bonds, moneys in said fund shall be transferred into a fund hereby established and designated "Water and Sewer Depreciation Fund" (the "Depreciation Fund"). Except as provided herein, money in the Depreciation Fund shall be used solely for the purpose of paying the cost of replacement and repairs made necessary by the depreciation of the System and for the cost of economically justifiable extensions to the System.

2. Payment from the Depreciation Fund shall be made by check or voucher signed by the managing officer of the System and the City Treasurer and drawn on the depository with which moneys in the Depreciation Fund shall be deposited. Each such check or voucher shall briefly specify the purpose of the expenditure.

3. If moneys in the Bond Fund shall be reduced below the amount required to meet the current debt service for the Bonds, plus the debt service reserve of \$56,623, and moneys available in the Revenue Fund are insufficient to make good the deficiency, then moneys on deposit in the Depreciation Fund shall be transferred to the Bond Fund in such amount as may be necessary to make good the deficiency, and the amount of moneys so transferred shall be added to the amount otherwise required to be paid into the Depreciation Fund on or before the first business day of the next month.

Section 10. Construction Fund. 1. There is hereby established a special fund of the City designated "Sewer System Construction Fund" (the "Construction Fund"). The Construction Fund shall be maintained in a bank that is a member of the FDIC and moneys therein shall be used solely to pay Project construction costs and necessary expenses incidental thereto, including legal and engineering fees and expenses.

2. Moneys in the Construction Fund shall be disbursed on the basis of checks or requisitions which shall contain at least the following information: The person, firm, or corporation to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each check or requisition must be signed by the managing officer of the System, and in the case of all items of expense over which any Consulting Engineer shall exercise supervision (which shall include all expenses except engineering fees, legal fees, and expenses pertaining to the issuance of the Bonds) each check or requisition shall be accompanied by a certificate signed by the Consulting Engineer (or by a designated representative thereof), certifying approval thereof. In the case of requisitions, the depository shall issue its check upon the Construction Fund payable to the person, firm, or corporation designated in the requisition. The depository shall keep records of all payments made on the basis of requisitions, and the managing officer of the System shall keep records as to payments made by check.

3. When construction of the Project is completed, the managing officer of the System and any Consulting Engineer shall file with the depository in which the Construction Fund is maintained a signed certificate stating the date of such completion and that all obligations payable from the Construction Fund have been discharged. Upon receipt of said certificate the depository shall pay or transfer all remaining

moneys in the Construction Fund pursuant to the written direction or check signed by the managing officer of the System and the City Treasurer and such balance shall be deposited to the Bond Fund and applied immediately to the prepayment of Bonds, in multiples of \$1,000 in principal amount. The City shall require the depository to execute an appropriate Deposit Agreement embodying the substance of the provisions of this Section 10.

Section 11. Custody/Investment of Moneys. 1. The City Treasurer shall be the custodian of Revenues and shall give sufficient bond for the faithful discharge of all duties as such custodian (the amount of such bond to be \$25,000, but in no event less than the total moneys at any time in the hands of the Treasurer and to be approved by the Council). A like bond in a sufficient amount to be approved by the Council shall be required of each person handling moneys of the System. All moneys received by the Treasurer shall be deposited by him or her in such depository or depositories for the City as may be lawfully designated from time to time by the Council; provided that each depository must hold membership in the FDIC. All deposits shall be in the name of the City and shall indicate the particular fund to which the moneys belong. Any deposit in any fund in excess of the amount insured by the FDIC shall be secured by a pledge of direct or fully guaranteed obligations of the United States of America, unless invested as herein authorized.

2. Except as provided herein, payments from any fund shall be made by check or voucher, signed by the Treasurer and the Mayor, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

3. Moneys held for the credit of the Construction Fund which exceed the estimated disbursements for the Project costs during the next ninety (90) days shall, as nearly as may be practicable, be continuously invested and reinvested in Investment Obligations which mature, or are subject to redemption by the holder or registered owner, not later than the date or dates when the moneys shall be needed for Project costs.

4. Moneys held for the credit of the debt service reserve in the Bond Fund shall be continuously invested and reinvested in Investment Obligations which mature, or are subject to redemption by the holder or registered owner thereof, not later than ten (10) years from the date of investment.

5. Moneys held for the credit of any other fund may, at the option of the City, be invested and reinvested by the City in Investment Obligations which mature, or are subject to redemption by the holder or registered owner thereof, not later than the date or dates when the moneys held for the credit of the particular fund will be required for the purpose intended.

6. Obligations purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund, and interest accruing thereon or any profit or loss realized from such investment shall be credited or charged to such fund.

Section 12. Insurance. 1. The City hereby covenants and agrees:

(a) To insure, and at all times keep insured, in the amount of the actual value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State of Arkansas to assume the risk thereof, all aboveground structures of the System (except reservoirs, standpipes, and elevated tanks) against loss or damage thereto from fire, lightning, tornado, winds, riot, strike, civil commition, malicious damage, explosion, and against loss or damage from any other causes customarily insured against by private companies engaged in a similar type of business. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement, or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement, and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Revenue Fund, and if such proceeds shall be insufficient for such purpose, the deficiency shall be from moneys in the Depreciation Fund. Nothing herein shall be construed as requiring the City to expend any funds for reconstruction, replacement, or repair of the System or for operation and maintenance of the System or for premiums on its insurance which are derived from sources other than insurance proceeds or revenues derived from the operation of the System, but nothing herein shall be construed as preventing the City from doing so;

(b) To maintain public liability insurance covering the City's ownership and operation of the System, with maximum liability limits of not less than \$25,000 for personal injury or death of a single person, \$50,000 for personal injury or death of more than one person in a single accident or occurrence, and \$15,000 for property damage arising from a single accident or occurrence;

(c) To maintain workers compensation insurance on all System employees in accordance with applicable Arkansas law.

Section 13. System Records. 1. The City will keep proper records, books, and accounts relating to the operation of the System, which shall be kept separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions. Such books shall be

available for inspection by the owner of the Bonds, or the agent or the representative of any owner of Bonds, at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an Accountant at least annually so long as any Bonds remain outstanding. If the FmHA holds any Bonds, the City will furnish to the FmHA, or, if so requested in writing, to any registered owner: (1) on or before thirty (30) days after the close of each fiscal year a statement of the operation of the System for the past fiscal year in form and content in the manner hereinafter specified, and (2) on or before ninety (90) days after the close of each fiscal year, a copy of the Accountant's audit report. Both reports required by the last preceding sentence shall contain at least the following information:

- (a) Comment regarding the manner in which the City has complied with the covenants in this Ordinance and recommendations for any changes or improvements in the operation of the System;
- (b) Statement of income and expense for the System;
- (c) Statement showing analysis of each fund, including deposits, withdrawals, and beginning and ending balances;
- (d) Balance sheet for the System;
- (e) Schedule of insurance policies and fidelity bonds showing, with respect to each policy and bond, the amount and nature of risk covered, the expiration date, the name of the insurer;
- (f) Names and titles of principal officials of the City;
- (g) Schedule of the manner of customers (connected and unconnected to the System) and showing the rate schedule currently in effect; and
- (h) A general statement concerning any events or circumstances which possibly might affect the financial status of the System.

2. The reports referred to above shall cover the operations of the System for the last ensuing fiscal year. In the event the City fails or refuses to furnish or cause such reports to be furnished, any registered owner the Bonds may have the reports made, and the cost thereof shall be charged against the Revenue/Operation Fund.

3. In addition to the annual reports provided for above, the City will cause statements of income and expense and balance sheets to be prepared quarterly and submitted to the

bondholder during the first three fiscal years following adoption of this Ordinance and thereafter at any time there is a default in payment of principal of or interest on the Bonds.

Section 14. Other Covenants. The City hereby covenants and agrees that:

(a) All Bonds paid or purchased either at or before maturity shall be cancelled when such payment or purchase is made, and held by the City and shall not be reissued.

(b) The System shall be operated on a fiscal year basis beginning January 1 and ending December 31 of each year.

(c) It will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State of Arkansas, including the charging and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, the segregating of Revenues as herein required, and applying Revenues to the respective funds herein created or referred to.

(d) It will maintain the System in good condition and operate the same in an efficient manner and at reasonable cost.

(e) None of the facilities or services afforded by the System shall be furnished without a charge being made therefor. In the event that the City or any department, agency, or instrumentality thereof shall avail itself of the facilities and services afforded by the System, the reasonable value of the service or facilities so afforded shall be charged against the City or such department, agency, or instrumentality and shall be paid for as the charges accrue. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be used and accounted for in the same manner as the other revenues derived from the operation of the System.

(f) So long as any Bonds are outstanding, the City will not mortgage, pledge, or otherwise encumber the System or the Revenues and will not sell, lease, or otherwise dispose of all or any substantial portion of the same except as provided in Section 15 of this Ordinance. Nothing herein shall be construed to prohibit the City from making such depositions of properties of the System and such replacements and substitutions for properties of the System as shall be necessary or incidental to the efficient operation thereof as a revenue producing undertaking.

(g) In the event the offices of Mayor, City Recorder or City Treasurer shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office, or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City, or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal function thereof, or by the office or officer upon whom such powers, obligations, and duties shall be imposed by law.

(h) It shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Bonds will not be used directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 103(c) of the Code.

Section 15. Additional Bonds. 1. As long as any Bonds are outstanding, the City shall not issue or attempt to issue any bonds having or claimed to be entitled to a priority of lien on the Revenues over the lien securing the Bonds, including any and all future extensions, betterments, and improvements to the System.

2. Nothing herein shall be construed in any manner to prevent the issuance by the City of additional bonds to finance or pay the cost of constructing extensions, betterments, and improvements to the System; however, any such additional bonds shall not be issued on a parity with the Bonds unless and until there shall have been obtained an Accountant's opinion that the Net Revenues for the fiscal year preceding the year in which such parity bonds are to be issued were not less than 120% of the average annual debt service requirements (principal and interest) on all outstanding bonds to which the revenues of the System are pledged and the bonds then proposed to be issued.

3. Nothing in this Ordinance shall prohibit the City from incurring indebtedness secured by a lien on Revenues subordinate to that securing the Bonds.

Section 16. Mortgage Liens. 1. There shall be a statutory mortgage lien on the extensions, betterments and improvements to the waterworks system, including the real property on which it is situated, as provided in Act 131, which shall exist in favor of the owner of the Bonds, and the said extensions, betterments and improvements to the waterworks

system shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of the Bonds. If there be any default in the payment of either the interest on or principal of the Bonds, and such default shall continue for thirty (30) days thereafter, and if default shall be made in the due and punctual performance of any of the other covenants and agreements contained in the Bonds or in this Ordinance, the owner of the Bonds may enforce the statutory mortgage lien upon said waterworks system or may by proper suit compel the performance of the duties of the officials of the City, all as set forth in Act 131.

2. The Mayor is hereby authorized to grant to the FmHA, as security the payment of the principal of and interest on the Bonds when due, a mortgage lien on any and all real and personal properties of the City used in the operation of the System, as may be required by the FmHA in connection with the purchase of the Bonds.

Section 17. Default Provisions. 1. If there by any default in the payment of the principal of or interest on the Bonds, or if the City defaults in the performance of any other covenants contained in this Ordinance, the registered owners of a majority in principal amount of the Bonds then outstanding may, by proper suit, compel the performance of the duties of the officials or the City as set forth in Acts 131 and 132, and in this Ordinance. In the case of a default in the payment of the principal of and interest on any of the outstanding Bonds, or if the City fails to comply with any other obligation which it herein assumes, the registered owners may also apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and collect (or by mandatory injunction or otherwise cause to be charged and collected) rates sufficient to provide for the payment of the interest outstanding and to apply the revenues in conformity with the provisions of Acts 131 and 132, and with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the City.

2. It is understood and intended that no one or more registered owners of the Bonds shall have any right in any manner whatever by his or their action to affect, disturb, or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the outstanding Bonds, and that any individual rights or action or other right given to one or more of such registered owners by law are restricted by this Ordinance to the rights and remedies herein provided.

3. No remedy conferred upon or reserved to the registered owners of the Bonds is intended to be exclusive of any other

remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or available under the law.

4. No delay or omission of any registered owners of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Ordinance to the registered owners of the Bonds may be exercised from time to time and as often as may be deemed expedient.

5. The registered owners of not less than a majority in principal amount of Bonds then outstanding may waive any default which shall have been remedied before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 18. Closing Instructions. 1. When the Bonds have been executed by the Mayor and City Recorder and the seal of the City impressed thereon, they shall be delivered to the purchaser upon payment of the purchase price. The proceeds from the sale of the Bonds shall be disbursed as follows:

(a) The amount necessary to provide for the payment of interest that will become due during the construction period of the Project shall be deposited in the Bond Fund.

(b) The amount necessary to pay in full the outstanding principal and accrued interest to date of payment of any interim certificates of indebtedness shall be used for that purpose.

(c) The balance of the proceeds shall be deposited in the Construction Fund and used as described in Section 10 of this Ordinance.

Section 19. Supplemental Ordinances. The provisions of this Ordinance shall constitute a binding contract between the City and the registered owners of the Bonds issued hereunder, and the City will at all times strictly adhere to the terms and provisions hereof and fully discharge all of its obligations hereunder. Subject to the terms and provisions contained in this Section and not otherwise, the registered owners of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this

Ordinance or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or interest on any bond issued hereunder, or (b) a reduction in the principal amount of any Bond or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of revenues other than as expressly authorized by the appropriate provisions of this Ordinance as now adopted, or (d) the creation of a privilege or priority of any bond or bonds over any other bond, or (e) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 20. Miscellaneous. 1. The provisions of this Ordinance are hereby declared to be separable, and if any provision shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of the Ordinance.

2. All ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

3. This Ordinance shall not create any right of any kind, and no right of any kind shall arise hereunder pursuant to it, until the bonds authorized by this Ordinance shall be issued and delivered.

Section 21. Emergency Clause. It is ascertained and declared that the lack of an adequate sewer system for the City of Clinton, Arkansas, endangers the life, health, and property of the inhabitants of the City; that it is necessary that the City immediately construct sewer system improvements to protect and preserve the life, health, and property of its inhabitants; that it is necessary to finance the cost of construction thereof by the sale of revenue bonds; and only by the adoption of this Ordinance can the City proceed to the expeditious sale of bonds and the construction of the improvements. IT IS THEREFORE, declared that an emergency exists, that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety, and that this Ordinance shall take effect and be in force from and after its passage.

PASSED: Aug 14, 1986.

APPROVED:

By: Charles Bradley

Mayor

ATTEST:

By: Jayne Rodgers

City Recorder

(S E A L)