

ORDINANCE NO. 89-183

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE REFUNDING BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING VARIOUS MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Clinton, Arkansas (the "City"), owns and operates water and sewer facilities, as a single, integrated municipal undertaking (the "System"); and

WHEREAS, the City has outstanding the following revenue bonds payable from System revenues: Water and Sewer Refunding and Improvement Revenue Bonds, Series 1964, dated March 1, 1964 (the "1964 Bonds"); Water and Sewer System Improvement Revenue Bonds, Series 1971, dated March 1, 1971 (the "1971 Bonds"); Water and Sewer Revenue Bonds, dated March 28, 1980 (the "1980 Bonds"); and Water and Sewer Revenue Bonds, Series 1986, dated April 12, 1988 (the "1988 Bonds"); and

WHEREAS, in order to receive debt service savings, the City Council has determined that it is in the best interest of the City to refund the 1980 Bonds and the 1988 Bonds (the "Bonds Refunded") with the proceeds of City of Clinton, Arkansas Water and Sewer Revenue Refunding Bonds, Series 1989 (the "Bonds") and available System revenues; and

WHEREAS, the City has obtained the certificate of an independent certified public accountant that conditions precedent to the issuance of parity bonds required by Ordinance No. 91 of the City, passed on September 23, 1971 (the "1971 Ordinance") have been fully met and complied with; and

WHEREAS, the City has made arrangements for the sale of \$720,000 in aggregate principal amount of the Bonds to T.J. Raney & Sons, Inc. (the "Purchaser"), at a price of 97% of par plus accrued interest from the date of the Bonds to date of delivery pursuant to a Bond Purchase Agreement (the "Agreement") which has been presented to and is before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Clinton, Arkansas:

Section 1. That the refunding of the Bonds Refunded (the "refunding") shall be accomplished. The Mayor and City Recorder are hereby authorized to take or cause to be taken, all action necessary to accomplish the refunding and to execute any contracts and documents necessary to that end.

Section 2. That the City Council hereby finds and declares that the period of usefulness of the System will be more than forty (40) years, which is longer than the term of the Bonds. The City Council further finds and declares that the conditions required by the 1971 Ordinance have been fully met and complied with and that, therefore, the Bonds are issued on a parity of lien, pledge and security on the System revenues and on the System with the 1971 Bonds.

Section 3. That the offer of the Purchaser is hereby accepted for the purchase of \$720,000 in principal amount of Bonds from the City at a price of 97% of par plus accrued interest, for Bonds bearing interest at the rates, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby, accepted and the Bonds are hereby sold to the Purchaser. The Agreement is hereby approved and confirmed and the Mayor is hereby authorized to execute and deliver the Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Agreement.

Section 4. That under the authority of the Constitution and laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated, and applicable decisions of the Supreme Court of the State of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), City of Clinton, Arkansas Water and Sewer Revenue Refunding Bonds, Series 1989, are hereby authorized and ordered issued in the principal amount of \$720,000 for the purpose of accomplishing the refunding, paying necessary expenses incidental thereto and to the authorization and issuance of the Bonds.

The Bonds shall bear interest at the rates and shall mature on May 1 in the years and in principal amounts as follows:

<u>Year</u> <u>(May 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
1990	\$10,000	6.50%
1991	10,000	6.50
1992	15,000	6.60
1993	15,000	6.65
1994	15,000	6.70
1995	15,000	6.80
1996	15,000	6.85
1997	20,000	6.90
1998	20,000	6.95
1999	20,000	7.00
2000	20,000	7.10
2001	25,000	7.15
2002	25,000	7.20
2003	25,000	7.25
2004	30,000	7.30
2005	30,000	7.35
2006	35,000	7.40
2007	35,000	7.45
2008	40,000	7.50
2009	40,000	7.50
2010	45,000	7.55
2011	50,000	7.60
2012	50,000	7.65
2013	55,000	7.70
2014	60,000	7.75

The Bonds shall bear interest from their respective dates and the Bonds shall be issuable only as fully registered Bonds in denominations of \$5,000 or an integral multiple thereof. Unless the City shall otherwise direct, the Bonds shall be numbered from 1 upward in order of issuance.

Bonds initially issued shall be dated May 1, 1989. Bonds issued upon transfer or exchange shall be dated as of the interest payment date to which interest has been paid as of the date on which delivered or, if delivered prior to a date on which interest has been paid, the date of the Bond for which exchanged. Interest on the Bonds shall be payable on November 1, 1989, and semiannually thereafter on May 1 and November 1 of each year.

Payment of each installment of interest shall be made to the person in whose name the Bond is registered on the

registration books of the City maintained by First National Bank of Lawrence County, Walnut Ridge, Arkansas (the "Trustee"), at the end of the fifteenth (15th) day of the month next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such Bond subsequent to such Record Date and prior to such interest payment date.

In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and delivered a new Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the owner's paying the reasonable expenses and charges of the City in connection therewith, and, in the case of a Bond destroyed or lost, his filing with the City evidence satisfactory to it that such Bonds were destroyed or lost, and of his ownership thereof, and furnishing the City with indemnity satisfactory to it. In the event any such Bond shall have matured, instead of issuing a new Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Bond under this Section 4, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith.

The City shall cause books for the registration and for the transfer of the Bonds as provided herein and in the Bonds to be kept by the Trustee. Each Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing upon surrender at the office of the Trustee. Upon such transfer, a new fully registered Bond or Bonds of the same maturity and for the same principal amount will be issued to the transferee in exchange therefor.

No charge shall be made to any owner of any Bond for the privilege of transfer or exchange, but any owner of any Bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the City in connection therewith shall be paid by the City. The Trustee shall not be required (i) to issue, transfer or exchange any Bond for a period beginning at the opening of business 15 days before any selection of Bonds for redemption and ending at the close of business on the day of the first mailing of the relevant notice of redemption, or (ii) to transfer or exchange any Bonds selected for redemption in whole or in part.



The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest of any Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or shall be in the State of Arkansas a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding business day not a Saturday or Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Section 5. That the Bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Recorder and shall have impressed, imprinted, engraved or lithographed thereon the seal of the City. The Bonds, together with interest thereon, are secured by and are payable solely from revenues of the System. System revenues are hereby irrevocably pledged and mortgaged for the equal and ratable payment of the Bonds on a parity of lien, pledge and security with the 1971 Bonds but subordinate to the pledge in favor of the 1964 Bonds. The Bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. That the Bonds shall be in substantially the following form and the Mayor and City Recorder are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Bond)

REGISTERED

REGISTERED

No. \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF VAN BUREN  
CITY OF CLINTON  
WATER AND SEWER REVENUE REFUNDING BOND  
SERIES 1989

Interest Rate: \_\_\_\_\_%                      Dated Date: \_\_\_\_\_  
Registered Owner: \_\_\_\_\_  
Principal Amount: \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_)  
Maturity Date: \_\_\_\_\_                      CUSIP NO.: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Clinton, County of Van Buren, State of Arkansas (the "City"), for value received, hereby promises to pay, but solely from the source as hereinafter provided and not otherwise, to the Registered Owner shown above, or registered assigns, the Principal Amount shown above on the Maturity Date shown above, 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 public and private debts and to pay interest on the unpaid Principal Amount, but solely from the source as hereinafter provided and not otherwise, in like coin or currency from the Dated Date shown above at the Interest Rate per annum shown above, payable November 1, 1989 and semiannually thereafter on May 1 and November 1 of each year, until payment of such Principal Amount or, if this Bond or a portion thereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this Bond. Payment of each installment of interest shall be made to the person in whose name this Bond is registered on the registration books of the City maintained by First National Bank of Lawrence County, Walnut Ridge, Arkansas (the "Trustee"), at the end of the fifteenth (15th) day of the month next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this Bond subsequent to such Record Date and prior to such interest payment date. Payment of principal shall be made upon presentation and surrender of this Bond to the Trustee at its principal corporate trust office in Walnut Ridge, Arkansas.

This Bond is one of an issue of City of Clinton, Arkansas Water and Sewer Revenue Refunding Bonds, Series 1989,

aggregating Seven Hundred Twenty Thousand Dollars (\$720,000) in principal amount (the "Bonds"), issued for the purpose of refunding certain prior bonds payable from revenues of the System (hereafter defined) and paying necessary expenses incidental thereto and to the authorization and issuance of the Bonds.

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated, 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), and pursuant to Ordinance No. 91 of the City, passed on September 23, 1971, and Ordinance No. \_\_\_\_\_ of the City, passed on \_\_\_\_\_, 1989 (collectively, the "Authorizing Ordinance"), and do not constitute an indebtedness of the City within any constitutional or statutory limitation. The Bonds are not general obligations of the City, but are special obligations payable solely from the revenues of the City's combined water and sewer system (the "System"). In this regard, the pledge securing the Bonds is on a parity of lien, pledge and security with the pledge securing the City's Water and Sewer System Improvement Revenue Bonds, Series 1971, dated March 1, 1971, (the "1971 Bonds"), but subordinate to the pledge securing the City's outstanding Water and Sewer Refunding and Improvement Revenue Bonds, Series 1964, dated March 1, 1964 so long as any of the 1964 Bonds or the 1971 Bonds are outstanding. An amount of System revenues sufficient to pay the principal of and interest on the Bonds and the 1971 Bonds has been duly pledged and set aside into the 1971 Water and Sewer Bond Fund created by the Authorizing Ordinance. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which the Bonds are issued, of the nature and extent of the security for the Bonds, and the rights and obligations of the City, the Trustee and the Bondholders. The City has fixed and has covenanted and agreed to maintain rates for the services of the System which shall be sufficient at all times to provide for the proper and reasonable expenses of operation and maintenance of the System, for the payment of the principal of and interest on all obligations payable from System revenues, as the same become due and payable, to establish and maintain any required debt service reserves and to make the required deposit for the depreciation of the System.

REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND ON THE REVERSE SIDE HEREOF WHICH HAVE THE SAME EFFECT AS IF SET FORTH IN THIS PLACE.

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

IN WITNESS WHEREOF, the City of Clinton, Arkansas has caused this Bond to be executed by its Mayor and City Recorder, by their manual or facsimile signatures thereunto duly authorized and its corporate seal to be impressed, lithographed or imprinted on this Bond, all as of the Dated Date shown above.

CITY OF CLINTON, ARKANSAS

ATTEST:

(facsimile signature)  
City Recorder

By (facsimile signature)  
Mayor

(SEAL)



(Reverse Side of Bond)

CITY OF CLINTON, ARKANSAS  
WATER AND SEWER REVENUE REFUNDING BOND, SERIES 1989

FURTHER PROVISIONS

The Bonds must be redeemed from proceeds of the Bonds not needed for the purposes intended, on any interest payment date, in whole or in part, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine).

The Bonds are subject to redemption at the option of the City, in whole or in part, from funds from any source, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine) on any interest payment date on or after May 1, 1994, at redemption prices (expressed as percentages of the principal amount being redeemed) plus accrued interest to the redemption date as follows:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
May 1, 1994 or November 1, 1994	102½%
May 1, 1995 or November 1, 1995	102%
May 1, 1996 or November 1, 1996	101½%
May 1, 1997 or November 1, 1997	101%
May 1, 1998 or November 1, 1998	100½%
May 1, 1999 and thereafter	100%

Notice of redemption identifying the Bonds or portions thereof (which must be integral multiples of \$5,000) to be redeemed and the date on which they shall be presented for payment shall be given by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to all registered owners of Bonds to be redeemed (in whole or in part). Failure to mail an appropriate notice or any such notice to one or more registered owners of Bonds to be redeemed (in whole or in part) shall not affect the validity of the proceedings for redemption of other Bonds or portions thereof as to which notice of redemption is duly given in proper and timely fashion. All such Bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date.

This Bond is transferable by the registered owner hereof in person or by his attorney-in-fact duly authorized in writing at the office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond or Bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. This Bond is issued with the intent that the laws of the State of Arkansas shall govern its construction.

The City may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes, and the City shall not be affected by any notice to the contrary.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Authorizing Ordinance until the Certificate of Authentication hereon shall have been signed by the Trustee.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Bonds, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the above referred to revenues pledged to the payment of the principal of and interest on the Bonds as the same become due and payable will be sufficient in amount for that purpose.

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds designated Series 1989  
and issued under the provisions of the within mentioned  
Authorizing Ordinance.

FIRST NATIONAL BANK OF LAWRENCE  
COUNTY  
Walnut Ridge, Arkansas  
TRUSTEE

By \_\_\_\_\_  
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_  
("Transferor"), hereby sells, assigns and transfers unto  
\_\_\_\_\_, the within Bond and all rights thereunder,  
and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ as attorney to transfer the within Bond on  
the books kept for registration thereof with full power of  
substitution in the premises.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Transferor

GUARANTEED BY:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member  
firm of the New York Stock Exchange or a commercial bank or a  
trust company.



Section 7. That the City has heretofore fixed (i) water rates by Ordinance No. 153, adopted on the 8th day of January, 1987, and (ii) sewer rates by Ordinance No. 143, adopted on the 28th day of July, 1986, which water and sewer rates are hereby confirmed and continued. Reference is hereby made to those Ordinances for the details thereof and other provisions pertaining thereto.

The City covenants and agrees that the rates charged for services of the System shall never be reduced while any of the Bonds are outstanding unless there is obtained from an independent certified public accountant a certificate that the net revenues of the System (net revenues being defined as gross revenues less the expenses of operation and maintenance of the System, including all expense items properly attributable to the operation and maintenance of the System under generally accepted accounting principles applicable to municipal water and sewer facilities but excluding depreciation, interest and bond amortization expenses), with the reduced rates, will always be equal to the amount required to be set aside for the Depreciation Fund and the debt service reserve for all obligations of the City to which System revenues are pledged (collectively, "System Obligations"), and leave a balance equal to at least 120% of the aggregate average annual principal and interest requirements on all outstanding System Obligations.

The City further covenants and agrees that the rates shall, if and when necessary, from time to time, be increased in such manner as will produce net revenues equal to at least 120% of the amount necessary for paying principal and interest when due on all outstanding System Obligations.

Section 8. That 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 services or facilities so afforded shall be charged against the City or such department, agency or instrumentality and shall be paid for as the charges therefor 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 any other revenues derived from the operation of the System. Nothing herein shall be construed as requiring the City or any department, agency or instrumentality thereof to avail itself of the facilities or services afforded by the System.

Section 9. That the Treasurer of the City shall be custodian of the gross revenues derived from the operation of

the System and that officer shall give bond in the sum of System revenues in his custody at any one time for the faithful discharge of his duties as such custodian. All moneys received by the Treasurer shall be deposited by him in such depository or depositories for the City as may be lawfully designated from time to time by the City; subject, however, to the giving of security as now or as hereafter may be required by law and provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC"). All deposits shall be in the name of the City and shall be so designated as to indicate the particular fund to which the revenues belong. Any deposit in excess of the amount insured by FDIC shall be secured by bonds or other direct or fully guaranteed obligations of the United States of America ("Government Obligations") unless invested directly in Government Obligations.

Section 10. That the City covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell or lease the same, or any substantial portion thereof; provided, however, that nothing herein shall be construed to prohibit the City from making such dispositions 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 of the System as a revenue-producing undertaking.

Section 11. That since the Bonds are being issued on a parity of security with the 1971 Bonds, the Bonds are to have the benefit of and are to be governed by the ordinances authorizing the 1964 Bonds and the 1971 Bonds, except as it may be in irreconcilable conflict with this Ordinance. Notwithstanding any provisions hereof, all the provisions of this Ordinance shall be interpreted in such manner as to preserve all the substantive rights of the holders of the 1964 Bonds and the 1971 Bonds (the "Prior Bonds").

Section 12. That there is presently being maintained, in connection with the Prior Bonds, certain funds established by the Ordinance No. 69 of the City, adopted January 7, 1964 in connection with the 1964 Bonds and the 1971 Ordinance, specifically, the: (1) Water and Sewer System Revenue Fund (the "Revenue Fund"); (2) the Water and Sewer System Operation and Maintenance Fund (the "Operation and Maintenance Fund"); (3) Water and Sewer System Revenue Bond and Interest Sinking Fund (the "1964 Bond Fund"); (4) the 1971 Water and Sewer Bond Fund (the "Bond Fund"); and (5) the Water and Sewer System Depreciation Fund (the "Depreciation Fund"). All of these funds and the covenants and restrictions set forth in connection therewith, are hereby ratified, confirmed and continued for the

security and protection of the Prior Bonds and the Bonds. It is the intent of this provision that the funds, covenants and restrictions referred to above shall continue in full force and effect as security for the Bonds after the Prior Bonds have been paid and retired except as they may be in irreconcilable conflict with this Ordinance.

Section 13. (a) That after making the deposit into the Operation and Maintenance Fund and the 1964 Bond Fund, the Treasurer shall transfer from the Revenue Fund into the Bond Fund, the sums in the amounts and at the times hereinafter stated in Subsection (b) of this Section 13 for the purpose of providing funds for the payment of the principal of and interest on the Bonds and the 1971 Bonds as they mature.

(b) There shall be paid into the Bond Fund on the first business day of each month, until all outstanding Bonds, with interest thereon, have been paid in full or provision made for such payment, a sum equal to (a) the amounts required by the 1971 Ordinance (the "1971 Bond Payments") plus (b) the amounts computed as follows: (i)  $1/5$  of the next installment of interest on the Bonds plus (ii)  $1/10$  of the next installment of principal of the Bonds plus (iii) an amount sufficient to provide for Trustee's fees (collectively, the "1989 Bond Payments"). The debt service reserve in the Bond Fund (the "Debt Service Reserve") created by the 1971 Bond Ordinance shall be increased to an amount equal to (i) \$13,100 (the "1971 Reserve Amount") plus (ii) an amount equal to the average annual debt service on the Bonds (the "1989 Reserve Amount") (collectively, the "required level"). Once the Debt Service Reserve reaches the required level, the 1989 Bond Payments may be reduced to (i)  $1/6$  of the next installment of principal of the Bonds plus (ii)  $1/12$  of the next installment of interest on the Bonds plus (iii) an amount sufficient to provide for Trustee's fees, but thereafter, if the 1989 Reserve Amount is impaired, increased payments of  $1/5$  and  $1/10$  shall be resumed until the impairment is cured. If the Debt Service Reserve is reduced below the 1971 Reserve Amount, the increased monthly payments required by the 1971 Ordinance shall be made until the impairment is cured.

The City shall maintain records reflecting the Bond Fund and Debt Service Reserve therein as constituted of two subaccounts, identified, respectively, as the "1971 Subaccount" and the "1989 Subaccount." The 1971 Subaccount shall hold all 1971 Bond Payments and the 1971 Reserve Amount, and the 1989 Subaccount shall hold all 1989 Bond Payments and the 1989 Reserve Amount. The maintenance of records reflecting a 1971 Subaccount and a 1989 Subaccount shall not be interpreted to affect in any way the parity of security among the Bonds, the 1971 Bonds or holders thereof, and the Bond Fund and Debt



Service Reserve therein shall secure each of them on a parity of pledge and security, without distinction or priority.

(c) Deposits into the Bond Fund shall be at the sole risk of the City and shall not operate as a payment of principal, interest or fees until so applied. No withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance or the 1971 Ordinance.

(d) If for any reason there shall be a deficiency in the payments made into the Bond Fund so that there are unavailable sufficient moneys therein to pay the principal of, premium, if any, and interest on the Bonds or the 1971 Bonds as the same become due, any sums then held in the Debt Service Reserve shall be used to the extent necessary to pay such principal, premium, interest and fees of any trustee or paying agent, but the Debt Service Reserve shall be reimbursed in the amount of any such payment as described above. The Debt Service Reserve shall be used solely as herein described, but the moneys therein may be invested as set forth below. Any earnings on moneys in the debt service reserve which increase the amount therein above the required level shall be used to redeem the Bonds or the 1971 Bonds to the extent callable or transferred into the Revenue Fund to be used to construct extensions, betterments or improvements to the System, except as otherwise provided in Section 28(d) of this Ordinance.

(e) If the revenues of the System are insufficient to make the required payment on the first business day of any month into the Bond Fund, then the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the first business day of the next month.

(f) It shall be the duty of the Treasurer to cause to be withdrawn from the Bond Fund at least ten (10) days before the due date of any principal and/or interest on any Bond or 1971 Bond, at maturity or redemption prior to maturity, and deposited with the appropriate trustee or paying agent (the Trustee in connection with the Bonds) an amount equal to the amount of such Bond or 1971 Bond and interest due thereon for the sole purpose of paying the same, together with the fees of any trustee or paying agent. When the moneys held in the Bond Fund shall be and remain sufficient to pay the principal of and interest on all Bonds and 1971 Bonds then outstanding, the Treasurer shall not be obligated to make any further payments into the Bond Fund, except payments pursuant to subsection (c).



(g) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds and the 1971 Bonds when due, except as herein specifically provided. If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments due during the next twelve (12) months and over and above the required level for the Debt Service Reserve, such surplus shall be used to redeem the Bonds or the 1971 Bonds to the extent callable or transferred into the Revenue Fund to be used to construct extensions, betterments or improvements to the System, except as otherwise provided in Section 28(d) of this Ordinance.

(h) The Bonds shall be specifically secured by a pledge of all the revenues required to be placed into the Bond Fund on a parity of security in favor of the 1971 Bonds. This pledge in favor of the Bonds is hereby irrevocably made according to the terms of this Ordinance, and the City and its officers and employees shall execute, perform and carry out the terms hereof in strict conformity with the provisions of this Ordinance.

(i) Upon payment in full of the 1971 Bonds, the 1971 Bond Payments required to be paid into the Bond Fund shall cease and the 1971 Reserve Amount of the Debt Service Reserve not used to make the final payment on the 1971 Bonds shall be transferred to the Revenue Fund. The required level for the Debt Service Reserve shall be reduced to the 1989 Reserve Amount.

Section 14. That any surplus in the Revenue Fund after making full provision for the other funds herein provided for may be used, at the option of the City, for any lawful municipal purpose, including, without limitation, the payment of System Obligations not payable from moneys in the Bond Fund.

Section 15. That all Bonds paid or purchased either at or before maturity shall be canceled when such payment or purchase is made and held by the Treasurer and shall not be reissued. All unpaid interest maturing on or prior to the date of such payments or purchase shall continue to be payable to the respective registered owners thereof.

Section 16. That the Bonds shall be subject to redemption prior to maturity in accordance with the terms set out in the Bond form in Section 6 hereof

Section 17. That as long as any of the Bonds are outstanding, the City shall not issue any bonds or other obligations claimed to be entitled to a priority of lien or

pledge on the revenues of the System over the lien and pledge securing the Bonds.

The City reserves the right to issue additional bonds to finance or pay the cost of constructing any future extensions, betterments and improvements to the System; provided, however, the City shall not authorize or issue any such additional bonds ranking on a parity with the Bonds, unless and until there shall have been procured and filed with the Trustee and the City Recorder a statement by an independent certified public accountant not in the regular employ of the City reciting the opinion, based upon necessary investigation, that net revenues of the System (net revenues being gross revenues of the System less the amounts required to pay the costs of operation, repair and maintenance of the System ("operation expenses"), excluding depreciation, interest and bond amortization expenses) for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 120% of the average annual principal and interest requirements on all the then outstanding System Obligations (including the Bonds) and the additional bonds then proposed to be issued. If no 1971 Bonds will be outstanding on the date the additional bonds will be issued, in making the computation set forth above, the City, and the independent certified public accountant on behalf of the City, may, based upon the opinion or report of a registered professional engineer not in the regular employ of the City, (a) treat any increase in rates for the System enacted subsequent to the first day of such preceding fiscal year as having been in effect throughout such fiscal year and may include in gross revenues for such fiscal year the amount that would have been received, based on such opinion or report, had the increase been in effect throughout such fiscal year and (b) treat the annual net revenues anticipated from the extensions, betterments and improvements to be constructed as additional net revenues in such fiscal year.

Section 18. That the City covenants that 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 making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, segregating the revenues of the System and applying them to the respective funds herein identified.

Section 19. That the City shall cause proper books of accounts and records to be kept (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the operation of the System, and such books shall be available for inspection by the

owner of any of the Bonds at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an independent certified public accountant at least once each year, and a copy of the audit shall be delivered to the Trustee and made available to the registered owners of the Bonds requesting the same in writing within 120 days after the end of the fiscal year. In the event the City fails or refuses to make the audit, any registered owner of the Bonds may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 20. That the City covenants and agrees that it will maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. While any Bonds are outstanding, the City agrees that it will 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 properties of the System, to the extent that such properties would be covered by insurance by private companies engaged in similar types of businesses against loss or damage thereto from fire and other perils included in extended coverage insurance in effect in Arkansas. 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 purposes the deficiency shall be supplied, first, from moneys in the Depreciation Fund, and second, from moneys in the Operation and Maintenance Fund, and third, from available moneys in the Revenue Fund. Nothing herein shall be construed as requiring the City to expend any funds for the operation and maintenance of the System or for premiums on its insurance which are derived from sources other than the operation of the System, but nothing herein shall be construed as preventing the City from doing so.

Section 21. That any Bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such Bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) cash fully insured by FDIC and/or (2) direct obligations of (including obligations issued or held in book entry form on the

books of) the Department of the Treasury of the United States of America ("Eligible Securities") (provided that such deposit will not affect the tax exempt status of the interest on any of the Bonds or cause any of the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code")), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of all the Bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such Bonds, all such moneys and/or Eligible Securities.

When all the Bonds shall have been paid within the meaning of this Ordinance, and if the Trustee has been paid its fees and expenses, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such Bonds to be paid over or delivered to or at the direction of the City. In determining the sufficiency of the deposit of Eligible Securities there shall be considered the principal amount of such Eligible Securities and interest to be earned thereon until the maturity of such Eligible Securities.

Section 22. That there shall be a statutory mortgage lien upon the water facilities which are part of the System (including all extensions, improvements and betterments now or hereafter existing) which shall exist in favor of the owners of the Bonds, and each of them and such water facilities shall remain subject to such statutory mortgage lien, until payment in **full of the interest on and principal of the Bonds and the Prior Bonds**; provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of the State of Arkansas in City of Harrison v. Braswell, supra.

Section 23. (a) That if there be any default in the payment of the principal of, premium, if any, or interest on any Bond, or if the City defaults in any Bond Fund requirement or in the performance of any of the other covenants contained and set forth in this Ordinance, the Trustee shall, and upon the written request of the owners of not less than ten percent (10%) in principal amount of Bonds then outstanding may, by proper suit, compel the performance of the duties of the officials of the



City under the laws of Arkansas. And, in the case of a default in the payment of the principal of and interest on any of the outstanding Bonds, the Trustee may, and upon the written request of the owners of not less than ten percent (10%) in principal amount of Bonds then outstanding shall, 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 the registered owners of the Bonds with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of operation expenses and to pay any Bonds and interest outstanding and to apply the revenues in conformity with the laws of Arkansas 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.

(b) No registered owner of any of the outstanding Bonds shall have any right in any manner whatever by his action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder, unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than ten percent (10%) in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right to exercise such power or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the laws of the State of Arkansas, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Ordinance or to any other remedy hereunder.

(c) All rights of action under this Ordinance or under any of the Bonds, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds.

(d) The Trustee may, and upon the written request of the owners of not less than a majority in principal amount of Bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or 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. All proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all registered owners of the outstanding Bonds, and that any individual rights of 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.

(e) That 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.

(f) In any proceeding to enforce the provisions of this Ordinance, the Trustee or any plaintiff Bondholder shall be entitled to recover from the City all costs of such proceeding, including reasonable attorneys' fees.

Section 24. That when the Bonds have been executed, they shall be authenticated by the Trustee and the Trustee shall deliver the Bonds to the Purchaser upon payment in cash of the purchase price of 97% of the principal amount thereof plus accrued interest from May 1, 1989 ("total sale proceeds"). The accrued interest shall be deposited into the Bond Fund to pay a portion of the interest on the Bonds due November 1, 1989. The Trustee's authentication fee shall be paid to the Trustee. The amount of the total sale proceeds necessary to provide sufficient funds, along with other moneys appropriated hereby, to refund the Bonds Refunded shall be applied for such purpose by making payment directly to the holder of such bonds. Next there shall be deposited in a special account of the City established with the Trustee designated "1989 Costs of Issuance Fund" (the "Costs of Issuance Fund") the sum necessary to pay the cost of issuing the Bonds. The balance, if any, shall, first, be used to reimburse the City for any contribution it has previously made to the refunding and, second, shall be deposited into the Debt Service Reserve to the extent necessary to raise the Debt Service Reserve to the required level and, third, shall be deposited into the Bond Fund for the purpose of (a) redeeming Bonds prior to maturity, or (b) if the amount is not sufficient for that purpose, to make the first principal and interest payment on the Bonds.

Section 25. That the moneys in the Costs of Issuance Fund shall be disbursed solely in payment of the expenses of

issuing the Bonds. Disbursements shall be on the basis of 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 requisition must be signed by the Chairman of the City's Water and Sewer Commission (the "Commission"). The Trustee shall issue its check upon the Costs of Issuance Fund payable to the person, firm or corporation designated in the requisition. The Trustee shall be required to keep records as to all payments made.

All expenses of issuing the Bonds shall be promptly paid after the Bonds have been delivered to the Purchaser. Upon the earlier of (a) receipt of notice from the Chairman of the Commission that all expenses have been paid or (b) ninety (90) days after the Bonds are delivered to the Purchaser, the Trustee shall transfer or pay any remaining balance to the City or to the funds as described above for excess Bond proceeds.

Section 26. That all amounts remaining in the bond funds for the Bonds Refunded shall be used to accomplish the refunding.

Section 27. That so long as the System is under the control of the Commission, performance by the Commission of any obligations of the City hereunder shall be deemed performance by the City.

Section 28. (a) Moneys held for the credit of all funds created by this Ordinance may be invested and reinvested in Government Obligations, in time deposits or certificates of deposit of banks, including the Trustee, which are insured by FDIC, or, if in excess of \$100,000, collateralized by Government Obligations ("Permitted Investments").

(b) Permitted Investments made from moneys in the Debt Service Reserve shall mature within five (5) years after the date of the investment. All other Permitted Investments shall mature, or shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys will be required for authorized expenditures.

(c) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund. All moneys in the Debt Service Reserve in the Bond



Fund above the required level shall be used by the City as set forth in Section 13(d) herein.

(d) Earnings on investments of moneys in the Debt Service Reserve in the Bond Fund representing the 1989 Reserve Amount in excess of the yield on the Bonds shall be deposited by the City into a separate trust fund in the Trustee which is hereby created and designated "Rebate Fund."

Within the Rebate Fund there shall be two accounts, an "Excess Earnings Account" and an "Income Account." All amounts paid into the Rebate Fund shall be deposited into the Excess Earnings Account.

Not more than 30 days following the end of each Bond Year and within 60 days after retirement of all of the Bonds, the City shall determine, or cause to be determined, the Excess Earnings Amount as of the most recent Calculation Date and the applicable Income Amount. Following such determination, the City shall take one or more of the following actions:

(i) if the amount on deposit as of such Calculation Date in the Excess Earnings Account is less than the Excess Earnings Amount as of such Calculation Date, deposit to the Excess Earnings Account moneys from the Debt Service Reserve in an amount calculated by the City as being sufficient to cause the amount on deposit in the Excess Earnings Account to be equal to the Excess Earnings Amount as of such Calculation Date; or

(ii) if the amount on deposit in the Excess Earnings Account is greater than the Excess Earnings Amount as of such Calculation Date, direct the Trustee in writing to transfer the amount of such excess to the Revenue Fund; and

(iii) direct the Trustee in writing to deposit the Income Amount to the Income Account.

In order to make the deposits required by subparagraphs (i) and (iii) above, the Trustee shall, at the written direction of the City, promptly either (A) transfer moneys from any fund held by the Trustee to the appropriate account of the Rebate Fund or (B) deposit amounts received from the City to the appropriate account of the Rebate Fund. All income earned on amounts on deposit in the Excess Earnings Account shall be deposited, as received, to the Income Account. All income earned on amounts on deposit in the Income Account shall be retained in the Income Account. In making the determination of the Excess Earnings Amount, the Income Amount and the Rebate Amount, the City may rely upon an opinion of nationally recognized bond counsel, or



certified public accountants nationally recognized as having expertise with respect to such matters, to the effect that the method of calculation utilized by the City complies with the applicable provisions of the Code and the Regulations.

At any relevant date, if then required by reason of Section 148(f) of the Code, the Trustee on behalf of the City shall, at the written direction of the City, remit to the United States Treasury, in such manner as may be required or permitted by the Code and the Regulations (including, without limitation, the information returned filed pursuant to Section 149(c) of the Code), such amounts as are deposited in the Rebate Fund so that the interest on the Bonds will not be includable in gross income for federal income tax purposes.

Records of the determinations with respect to the Rebate Amount and the Rebate Fund shall be retained by the City until six years after the retirement of all of the Bonds.

Capitalized terms used in this Section 28 shall, unless the context requires a different meaning, have the meanings specified below.

The term "Bond Year" means each one-year period ending on the day preceding each anniversary of the Issue Date, until the Bonds are retired.

The term "Calculation Date" means the last day of each Bond Year and the date upon which the last Bond is retired.

The term "Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

The term "Excess Earnings Amount" means, as of any Calculation Date, (a) the excess of (i) the aggregate amount earned (computed in accordance with the rules of Section 1.103-15AT(d)(2) of the Regulations) from the Issue Date to such Calculation Date on all Nonpurpose Investments (other than Nonpurpose Investments held in the Rebate Fund) acquired with the Gross Proceeds of the Bonds over (ii) the amount that would have been earned from the Issue Date to such Calculation Date if such Nonpurpose Investments had been invested at a rate equal to the actual Yield (calculated in accordance with Section 1.103-15AT(d)(2)(ii) of the Regulations) on the Bonds from the Issue Date to such Calculation Date less (b) any Excess Earnings Amount previously paid to the United States of America as part of the Rebate Amount; provided that if the aggregate gross

earnings (including investment income on such earnings) on Nonpurpose Investments acquired with the Gross Proceeds of the Bonds allocated to the Bond Fund (other than the 1989 Reserve Amount in the Debt Service Reserve) do not exceed \$100,000 in a Bond Year, such gross earnings during such Bond Year shall not be taken into account in calculating such Excess Earnings Amount.

The term "Gross Proceeds" means the sum of the following amounts:

(i) original proceeds, namely, net amounts received by or for the City as a result of the sale of the Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(ii) investment proceeds, namely, amounts received at any time by or for the City, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(iii) sinking fund proceeds, namely, amounts, other than original proceeds and investment proceeds (as referenced in clauses (i) and (ii) above) of the Bonds, which are held in the Bond Fund and any other fund to the extent that the City reasonably expects to use such other fund to pay Debt Service on the Bonds;

(iv) Investment Property pledged as security for payment of Debt Service on the Bonds by the City;

(v) amounts, other than as specified in this definition, used to pay Debt Service on the Bonds; and

(vi) amounts received as a result of investing amounts described in this definition.

The term "Income Amount" means, in the case of any Bond Year as of the close of which the Excess Earnings Amount is positive, that amount of income which is attributable to the lesser of (a) the Excess Earnings Amount as of the Calculation Date for that Bond Year, or (b) the amount by which such Excess Earnings Amount as of such Calculation Date in question exceeds

the Excess Earnings Amount as of the Calculation Date for the preceding Bond Year, but in either case only to the extent that such income is earned from the close of the Bond Year in question to the date of the next transfer of amounts to the Excess Earnings Account required by this Section 28(d).

The term "Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, to the extent allowed by the Code, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes.

The term "Issue Date" means the date of first authentication and delivery of the Bonds.

The term "Net Proceeds", when used with reference to the Bonds, means the face amount of the Bonds, plus accrued interest, less the amount deposited into the Debt Service Reserve from Bond proceeds.

The term "Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

The term "Purchase Price," for the purpose of computation of the Yield of the Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity are sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer.

The term "Rebate Amount" means, as of any Calculation Date, the sum of (a) the Excess Earnings Amount plus (b) all amounts on deposit in the Income Account of the Rebate Fund.

The term "Regulations" means temporary and permanent regulations promulgated under the Code.

The term "Yield" means that yield which, when used in computing the present worth of all payments of principal and interest on the Bonds produces an amount equal to the Purchase Price of the Bonds, all computed as prescribed in applicable Regulations.

Section 29. That in the event the office of Mayor, City Recorder, City Treasurer, Commission or City Council 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 functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 30. That anything herein to the contrary notwithstanding, all rights of any owner of any Bond hereunder to or with respect to any moneys or investments held in any fund hereunder shall terminate at the expiration of five (5) years from the date of maturity of such Bond, whether by scheduled maturity or by call for redemption prior to maturity in accordance with the terms hereof.

Section 31. That the City covenants that 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 included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Bonds and revenues of the System 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 148 of the Code. In this regard, the City agrees to make the required rebate payments to the United States from System revenues and to file all reports required by Section 148 of the Code.

Section 32. That the City shall assure that (i) not in excess of ten percent (10%) of the "net proceeds" of the Bonds or the Bonds Refunded (being, in the case of the Bonds the principal amount originally issued less amounts deposited in the debt service reserve in the Bond Fund from Bond proceeds and in the case of the Bonds Refunded the principal amount thereof) is used for "private business use" (being used directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local government and use as a member of the general public) if, in addition, the payment of more than ten percent (10%) of the principal or ten percent (10%) of the interest due on the Bonds or the Bonds Refunded during the term thereof is, under the terms of the



Bonds or the Bonds Refunded as originally issued or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a private business use or in payments in respect of property used or to be used for a private business use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for a private business use; and (ii) that, in the event that both (A) in excess of five percent (5%) of the net proceeds of the Bonds or the Bonds Refunded are used for a private business use, and (B) an amount in excess of five percent (5%) of the principal or five percent (5%) of the interest due on the Bonds or the Bonds Refunded during the term thereof is, under the terms of the Bonds or the Bonds Refunded as originally issued or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said private business use or in payments in respect of property used or to be used for said private business use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for said private business use, then said excess over said five percent (5%) of net proceeds of the Bonds or the Bonds Refunded used for a private business use shall be used for a private business use related to the governmental use of the project financed with the Bonds Refunded and shall not exceed the proceeds use for the governmental use of the project financed with the Bonds Refunded to which such private business use relates.

The City shall also assure that not in excess of five percent (5%) of the net proceeds of the Bonds or the Bonds Refunded are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

Section 33. That the Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of the Code. The City represents and covenants that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 1989 does not and will not exceed \$10,000,000.

Section 34. (a) That the City covenants that it will take no action which would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code; specifically, (A) the payment of any portion of principal or interest with respect to the Bonds will not be guaranteed (directly or indirectly) by the United States or any agency or instrumentality thereof, and (B) none of the proceeds

of the Bonds (exclusive of proceeds invested for an initial temporary period until needed for the purpose for which the bonds were issued and proceeds deposited into the Bond Fund) will be invested (directly or indirectly) in federally insured deposits or accounts. Nothing in this Section 34 shall prohibit investments in bonds issued by the United States Treasury.

(b) The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, a statement required by Section 149(e) of the Code.

Section 35. (a) That the terms of this Ordinance shall constitute a contract between the City and the registered owners of the Bonds and no variation or change in the undertaking herein set forth shall be made while any of the Bonds are outstanding, except as hereinafter set forth in subsections (b) and (c), and the owner of any Bonds may at any time for and on his own behalf or for and on behalf of all Bondholders enforce the obligations of the City by a proper suit for that purpose.

(b) The Trustee may consent to any variation or change in this Ordinance to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto without the consent of the owners of the outstanding Bonds.

(c) The 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 contained in this Section shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or (3) the creation of a lien or pledge superior to the lien and pledge created by this Ordinance, or (4) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (5) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

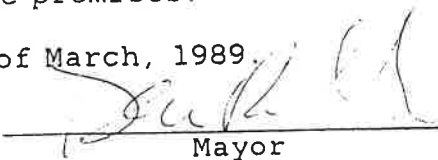
Section 36. That the Trustee shall be First National Bank of Lawrence County, Walnut Ridge, Arkansas. The Trustee shall only be responsible for the exercise of good faith and reasonable prudence in the execution of its trust. The recitals in this Ordinance and in the face of the Bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the owners of not less than ten percent (10%) in principal amount of the Bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by sixty (60) days notice in writing to the City and the owners of the Bonds, and the majority in value of the owners of the outstanding Bonds at any time, with or without cause, may remove the Trustee. The resignation or removal shall not be effective until a successor Trustee is appointed. In the event of a resignation or removal, the majority in value of the owners of the outstanding Bonds may appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the City Recorder. If the majority in value of the owners of the outstanding Bonds shall fail to fill a vacancy within forty-five (45) days after the same shall occur, then the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Recorder. The original Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trust imposed upon it or them by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the Bonds agree. Such written acceptance shall be filed with the City Recorder and a copy thereof shall be placed in the Bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee.

Section 37. That the Mayor is hereby directed to publish for one insertion in a newspaper which is published in the City, this Ordinance, to which shall be attached a notice signed by him in substantially the following form:

NOTICE

Notice is hereby given that the City Council of the City of Clinton, Arkansas has adopted the Ordinance hereinafter set out; that the City contemplates the issuance of the Water and Sewer Revenue Refunding Bonds, Series 1989, described in the Ordinance; that any person interested may appear before the Council on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, at \_\_\_\_\_ o'clock p.m., at the usual meeting place of the Council held in Clinton, Arkansas, and present protests. At such hearing all objections and suggestions will be heard, and the Council will take such action as is deemed proper in the premises.

Dated this \_\_\_\_\_ day of March, 1989.

  
\_\_\_\_\_  
Mayor



Section 38. That 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 shall be issued and delivered.

Section 39. That the provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal and invalid, it shall not affect the validity of the remainder of this Ordinance.

Section 40. That all ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 41. That it is hereby ascertained and declared that the refunding must be accomplished as soon as possible in order to lower the interest cost on System Obligations, and that the issuance of the Bonds and the taking of the other action authorized by this Ordinance are necessary for the accomplishment thereof. 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 in force from and after its passage.

PASSED: March 23, 1989.

ATTEST:

Charles Hicks  
City Recorder

APPROVED:

[Signature]  
Mayor

(SEAL)

CERTIFICATE

STATE OF ARKANSAS           )  
                                      )  
COUNTY OF VAN BUREN       )

The undersigned, City Recorder of the City of Clinton, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 89-783 adopted at a regular session of the City Council of the City of Clinton, Arkansas, held at its regular meeting place in said City at 5 o'clock P.m., on the 23 day of March, 1989, and that the said Ordinance is of record in Ordinance Record Book \_\_\_\_\_, Page \_\_\_\_\_, now in my possession.

Given under my hand and seal on this 23 day of March, 1989.

Charles Hicks  
City Recorder

(SEAL)