

ORDINANCE NO. 97-248

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER FACILITIES OF THE CITY OF CLINTON, ARKANSAS; AUTHORIZING THE ISSUANCE AND SALE OF WATER AND SEWER REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Clinton, Arkansas (the "City") owns and operates water and sewer facilities, which are operated as a single, integrated municipal undertaking (the "System") by the Clinton Water and Sewer Commission (the "Commission"); and

WHEREAS, the City Council and the Commission have determined that extensions, betterments and improvements to the water facilities of the System (the "Improvements") are necessary in order to make the services thereof adequate for the needs of the City and have caused to be prepared by a qualified consulting engineer, general plans for the Improvements, which plans have been examined and approved by the Commission and the City Council and a copy of which plans are on file in the office of the City Recorder where they may be inspected by any interested person; and

WHEREAS, the City does not have available funds to pay the costs of the Improvements, funding a reserve and issuing bonds but can obtain the necessary funds by the issuance of water and sewer revenue bonds in the aggregate principal amount of \$1,785,000 (the "bonds"); and

WHEREAS, the City has made arrangements for the sale of the bonds to T. J. Raney & Sons, a division of Morgan Keegan & Company, Inc. (the "Purchaser"), at a price of 98% of par plus accrued interest (the "Purchase Price") pursuant to a Bond Purchase Agreement (the "Agreement") which has been presented to and is before this meeting; and

WHEREAS, the City has outstanding an issue of Water and Sewer Refunding and Improvement Revenue Bonds, Series 1964, dated March 1, 1964 (the "1964 Bonds") authorized by Ordinance No. 69, adopted on January 7, 1964; and

WHEREAS, the City has outstanding an issue of Water and Sewer Refunding Revenue Bonds, Series 1993 (the "1993 Bonds") authorized by the Ordinance No. 89-183, adopted on March 23, 1989 (the "1989 Ordinance"), as supplemented by Ordinance No. 93-215, adopted on October 14, 1993 (collectively, the "1993 Bond Ordinance"); and

WHEREAS, the City has outstanding an issue of Water and Sewer Refunding Revenue Bonds, Series 1996 (the "1996 Bonds"),

authorized by the 1993 Bond Ordinance and Ordinance No. 95-232, adopted on December 14, 1995 (collectively, the "1996 Bond Ordinance"); and

WHEREAS, the Preliminary Official Statement, dated April 11, 1997, offering the bonds for sale (the "Preliminary Official Statement") has been presented to and is before this meeting; and

WHEREAS, the Continuing Disclosure Agreement between the City and First National Bank of Lawrence County, Walnut Ridge, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the bonds, has been presented to and is before this meeting; and

WHEREAS, the coverage test for securing the bonds with a lien on revenues of the System on a parity with the lien on System revenues in favor of the 1993 Bonds and the 1996 Bonds has been met;

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

Section 1. That the improvements shall be accomplished. The improvements shall be accomplished under the control and supervision of, and all details in connection therewith shall be handled by, the Commission. The Commission shall make all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers. The Commission shall let all contracts pursuant to and in accordance with existing laws and shall require such performance bonds and insurance as will, in the judgment of the Commission, fully insure completion of the improvements so as to fully promote and protect the best interests of the City and the owners of the bonds.

Section 2. The City Council hereby finds and declares that the period of usefulness of the System will be more than 20 years, which is longer than the term of the bonds.

Section 3. The offer of the Purchaser for the purchase of the bonds from the City at the Purchase Price for bonds bearing interest at the rates per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby accepted, and the Agreement, in substantially the form submitted to this meeting, is approved and the bonds are hereby sold to the Purchaser. The Mayor is hereby authorized and directed 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.

The Preliminary Official Statement is hereby approved and the previous use of the Preliminary Official Statement by the Purchaser in connection with the sale of the bonds is hereby in all respects approved and confirmed, and the Mayor be, and he is hereby, authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City for use in connection with the sale of the bonds as set forth in the Agreement.

Section 4. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 234, Subchapter 2, and Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated and applicable decisions of the Supreme Court of the State, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), City of Clinton, Arkansas Water and Sewer Revenue Bonds, Series 1997 are hereby authorized and ordered issued in the principal amount of \$1,785,000 for the purpose of accomplishing the Improvements, funding a debt service reserve and paying expenses of issuing the bonds. The bonds shall mature on May 1 in the years and in the amounts and shall bear interest as follows:

<u>Year (May 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
1998	\$55,000	4.20%
1999	55,000	4.60
2000	60,000	4.70
2001	60,000	4.80
2002	65,000	4.85
2003	70,000	4.90
2004	70,000	4.95
2005	75,000	5.05
2006	80,000	5.15
2007	80,000	5.20
2008	85,000	5.30
2009	90,000	5.35
2010	95,000	5.40
2011	100,000	5.45
2012	110,000	5.50
2013*	115,000	5.70
2014*	120,000	5.70
2015*	125,000	5.70
2016*	135,000	5.70
2017	140,000	5.70

*Mandatory sinking fund redemption dates

The bonds shall be dated May 1, 1997 and shall be issuable only as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Unless

the City shall otherwise direct, the bonds shall be numbered from 1 upward in order of issuance. Each bond shall have a CUSIP number.

Interest on the bonds shall be payable on November 1, 1997, 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, as Trustee and Paying Agent (the "Trustee"), at the close of business on the fifteenth day of the month (whether or not a business day) 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.

Each bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from May 1, 1997, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 6 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate upon any such bond shall be conclusive evidence that such bond has been authenticated and delivered under this Ordinance. The Certificate on any bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the bonds.

In case any bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver 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 paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such bond was destroyed or lost, and of his ownership thereof, and

furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new bond. 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, 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 (including the fees and expenses of the Trustee) connected therewith.

The City shall cause books for the registration and for the transfer of the bonds as provided herein and in the bonds. The Trustee shall act as the bond registrar. Each bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. 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.

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 or the Trustee incurred in connection therewith shall be paid by the City. The City shall not be required 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 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 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. 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 or imprinted thereon the seal of the City. The bonds, together with interest thereon, are secured by and are payable solely from revenues derived from the System ("Revenues") which are hereby pledged and mortgaged for the equal and ratable payment of the bonds. The pledge of Revenues in favor of the bonds shall be on a parity with the pledge in favor of the 1993 Bonds and the 1996 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. The bonds and the Certificate 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 BOND,
SERIES 1997

Interest Rate: _____ % Maturity Date: May 1, _____
Dated Date: May 1, 1997
Registered Owner: _____
Principal Amount: _____ Dollars
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 upon the presentation and surrender hereof at the principal corporate trust office of First National Bank of Lawrence County, Walnut Ridge, Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee"), on the Maturity Date shown above, the Principal Amount 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 by check or draft interest thereon, but solely from the source as

hereinafter provided and not otherwise, in like coin or currency from the interest commencement date specified below at the Interest Rate per annum shown above, payable November 1, 1997 and semiannually thereafter on the first days of May and November of each year, until payment of such principal sum or, if this bond or a portion hereof 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 the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) 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.

This bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from the Dated Date shown above, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

This bond is one of an issue of City of Clinton, Arkansas Water and Sewer Revenue Bonds, Series 1997, aggregating One Million Seven Hundred Eighty-Five Thousand Dollars (\$1,785,000) in principal amount (the "bonds"), and is issued for the purpose of financing of the costs of the acquisition, construction and equipping of extensions, betterments and improvements to the City's water facilities, paying necessary expenses incidental thereto and to the authorization and issuance of the bonds, and funding a debt service reserve.

The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 234, Subchapter 2, and 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. 89-183, duly adopted on March 23, 1989, as supplemented by Ordinance No. 93-215, duly adopted on October 14, 1993, Ordinance No. 95-232, duly adopted on December 14, 1995 and Ordinance No. 97-_____, duly adopted on April 22, 1997 (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 derived from the operation of the City's water and sewer (combined) system (the "System"). The pledge of System revenues to the payment of the bonds is on a parity with the pledge in favor of the City's Water and Sewer Refunding Revenue Bonds, Series 1993 (the "1993 Bonds") and Water and Sewer Refunding Revenue Bonds, Series 1996 (the "1996 Bonds"), but is subordinate to the pledge in favor of the City's Water and Sewer System Refunding and Improvement Revenue Bonds, Series 1964. An amount of System revenues sufficient to pay the principal of and interest on the bonds, the 1993 Bonds and the 1996 Bonds has been duly pledged and set aside into the 1971 Water and Sewer Revenue Bond Fund identified in 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 registered owners of the bonds. 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 and for the payment of the principal of and interest on the bonds, including Trustee's fees, as the same become due and payable, to establish and maintain a debt service reserve 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 SECTION 265 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, their facsimile signatures thereunto duly authorized and its corporate seal to be impressed 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 BOND, SERIES 1997

The bonds shall be subject to extraordinary, optional and mandatory sinking fund redemption as follows:

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

2. The bonds are also subject to redemption at the option of the City on and after May 1, 2002, from funds from any source, in inverse order of maturity (bonds within a maturity to be selected by lot in such manner as the Trustee may determine) in whole at any time or in part on any interest payment date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

3. To the extent not previously redeemed, the bonds maturing on May 1, 2017 are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on the dates and in the amounts set forth below, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption:

Bonds Maturing May 1, 2017

<u>Redemption Dates</u>	<u>Principal Amounts</u>	<u>Redemption Dates</u>	<u>Principal Amounts</u>
May 1, 2013	\$115,000	May 1, 2016	\$135,000
May 1, 2014	120,000	May 1, 2017 (maturity)	140,000
May 1, 2015	125,000		

The provisions for mandatory sinking fund redemption of the bonds are subject to the provisions of the Authorizing Ordinance which permit the City to receive credit for bonds previously redeemed or for bonds acquired by the City and surrendered to the Trustee.

In case any outstanding bond is in a denomination greater than \$5,000, each \$5,000 of face value of such bond shall be treated as a separate bond of the denomination of \$5,000.

Notice of redemption identifying the bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed shall be given by the Trustee, not less than 30 nor more than 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. Failure to mail an appropriate notice or any such notice to one or more registered owners of bonds to be redeemed shall not affect the validity of the proceedings for redemption of other bonds 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 principal corporate trust 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 shall govern its construction.

The City and the Trustee 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 neither the City nor the Trustee shall be affected by any notice to the contrary.

The bonds are issuable only as fully registered bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, fully registered bonds may be exchanged for a like aggregate principal amount of fully registered bonds of the same maturity of other authorized denominations.

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 premium, if any, and interest on the bonds as the same become due and payable will be sufficient in amount for that purpose.

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.

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds issued under the provisions of the within mentioned Authorizing Ordinance.

Date of Authentication: _____

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 of or participant in the Securities Transfer Agents Medallion Program

(STAMP), or in another signature guaranty program recognized by the Trustee.

Section 7. Since the bonds are being issued on a parity of security with the 1993 Bonds and the 1996 Bonds, the bonds are to have the benefit of and are to be governed by the 1996 Bond Ordinance and all of the provisions of the 1996 Bond Ordinance (including those incorporated therein by reference), except those provisions clearly inconsistent herewith or inapplicable hereto, including, without limitation, the provisions pertaining to the establishment and charging of rates for services of the System, vacancies in office, the collection, depositing, securing, disbursing, investing and handling of Revenues and funds, the parity bond requirements and the operation, maintenance, insurance and care of the System, are hereby made applicable hereto and are incorporated herein by reference as though fully set forth at this point. The effect of the above covenant shall be to continue the applicable provisions in full force and effect even after the payment of the 1993 Bonds and the 1996 Bonds and until the bonds are paid, or provision made therefor. In this regard, the following funds incorporated into the 1996 Bond Ordinance are hereby confirmed and continued: Water and Sewer System Revenue Fund (the "Revenue Fund"); Water and Sewer System Operation and Maintenance Fund (the "Operation and Maintenance Fund"); Water and Sewer System Revenue Bond Fund (the "Prior Bond Fund"); 1971 Water and Sewer Bond Fund (the "Bond Fund"); and Water and Sewer System Depreciation Fund.

Section 8. (a) After making payments into the Operation and Maintenance Fund and the Prior Bond Fund, there shall be paid from the Revenue Fund into the Bond Fund the sums in the amounts and at the times described below for the purpose of providing funds for the payment of the principal of and interest on the 1993 Bonds, the 1996 Bonds and the bonds, as they mature, with trustee's fees for each issue, and as a debt service reserve.

(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 (i) $\frac{1}{5}$ of the next installment of interest on the 1993 Bonds, the 1996 Bonds and the bonds plus (ii) $\frac{1}{10}$ of the next installment of principal of the bonds, the 1993 Bonds and the 1996 Bonds. Once the debt service reserve in the Bond Fund (the "Debt Service Reserve") shall reach an amount equal to the average annual debt service requirement on the 1993 Bonds, the 1996 Bonds and the bonds, the monthly payments into the Bond Fund may be reduced to (i) $\frac{1}{6}$ of the next installment of principal of the bonds, the 1993 Bonds and the 1996 Bonds plus (ii) $\frac{1}{12}$ of the next installment of interest on the 1993 Bonds, the 1996 Bonds and the bonds, but thereafter, if the Debt Service Reserve becomes impaired, increased payments of $\frac{1}{5}$ and $\frac{1}{10}$ shall be resumed until

the impairment is cured. As each series of parity bonds is retired, the Debt Service Reserve shall be reduced to the lesser of 10% of the original principal amount of the remaining outstanding parity bonds or the remaining average annual principal and interest requirement on such parity bonds.

The City shall maintain records reflecting the Bond Fund and Debt Service Reserve as constituted of the subaccounts, identified, respectively, as the "1997 Subaccount," the "1996 Subaccount" and the "1993 Subaccount." The 1993 Subaccount shall hold all debt service payments for the 1993 Bonds and the portion of the Debt Service Reserve relating to the 1993 Bonds, the 1996 Subaccount shall hold all debt service payments for the 1996 Bonds and the portion of the Debt Service Reserve relating to the 1996 Bonds, and the 1997 Subaccount shall hold all debt service payments for the bonds and the portion of the Debt Service Reserve relating to the bonds. The maintenance of records reflecting a 1997 Subaccount, a 1996 Subaccount and a 1993 Subaccount shall not be interpreted to affect in any way the parity of security among the bonds, the 1993 Bonds and the 1996 Bonds, and the Bond Fund and Debt Service Reserve shall secure each of them on a parity of pledge and security, without distinction or priority.

The City shall also pay into the Bond Fund such additional sums as necessary to provide for the trustee's fees for each issue and expenses and any arbitrage rebate due the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code"). The City shall receive a credit against monthly deposits into the Bond Fund from bond proceeds deposited therein, all interest earnings on moneys in the Bond Fund and for transfers into the Bond Fund derived from earnings in the Debt Service Reserve during the preceding month as hereinafter provided.

(c) 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, the 1993 Bonds or the 1996 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 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 transferred from the Debt Service Reserve and used as a credit against the next monthly deposit into the Bond Fund.

(d) It shall be the duty of the City Treasurer to cause to be withdrawn from the Bond Fund at least 10 days before the due

date of any principal and/or interest on any bond at maturity or redemption prior to maturity, and deposited with the Trustee an amount equal to the amount of such 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, 1993 Bonds and 1996 Bonds then outstanding, the City Treasurer shall not be obligated to make any further payments into the Bond Fund.

(e) 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, the 1993 Bonds, and the 1996 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 12 months and over and above the required level for the Debt Service Reserve, such surplus shall be used to redeem the bonds, the 1993 Bonds or the 1996 Bonds to the extent callable, shall be transferred into the Revenue Fund to be used to construct extensions, betterments or improvements to the System or shall be used to make the arbitrage rebate payments described above.

(f) The bonds shall be specifically secured by a pledge of all Revenues on a parity of security with the 1993 Bonds and the 1996 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 thereof in strict conformity with the provisions of this Ordinance.

Section 9. So long as any of the bonds are outstanding, the City shall not issue or attempt to issue any bonds claimed to be entitled to a priority of lien on Revenues over the lien securing the bonds. The City reserves the right to issue additional bonds to finance or pay the cost of making any future extensions, betterments or improvements to the System, or to refund such bonds, but the City shall not authorize or issue any such additional bonds ranking on a parity with the bonds, unless and until the parity bond test set forth in Section 17 of the 1989 Ordinance is met and the necessary certificates are filed with the Trustee.

Section 10. 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. The City covenants and agrees to cause to be paid into the Bond Fund sufficient funds to redeem bonds subject to mandatory sinking fund redemption in the amounts and on the dates set forth in the bonds. Therefore, in calculating the monthly payments to be deposited into the Bond Fund, the term "next installment of principal" shall include the principal of the bonds

maturing on the next principal payment date and the principal of the bonds which will be redeemed in accordance with the mandatory sinking fund redemption provisions of the bonds on the next interest payment date scheduled for such redemption.

The City may acquire bonds by purchase at a price not in excess of par plus accrued interest, inclusive of brokerage fees, and surrender to the Trustee any bonds so acquired, in exchange for which the City shall receive a credit under this Ordinance in an amount equal to the principal amount of the bonds so acquired and surrendered, for and of the then next date for mandatory sinking fund redemption of bonds of the same maturity.

Section 11. 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. In the event that the City fails or refuses to make the audit, the Trustee or 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 12. The insurance policies required by Section 20 of the 1989 Ordinance are to carry a clause making them payable to the Trustee as its interest may appear, and satisfactory evidence of said insurance shall be filed with the Trustee.

Section 13. 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 the Federal Deposit Insurance Corporation ("FDIC") sufficient to make such payment 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 ("Escrow 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 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 any 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 Escrow Securities.

When all the bonds shall have been paid within the meaning of this Ordinance, if the Trustee has been paid its fees and expenses and if any arbitrage rebate due the United States Treasury under Section 148(f) of the Code has been paid or provided for to the satisfaction of the Trustee, 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 Government Securities there shall be considered the principal amount of such Government Securities and interest to be earned thereon until the maturity of such Government Securities.

Section 14. If there be any default in the payment of the principal of or interest on any of the bonds, or if the City defaults in any Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance, the Trustee may, and upon the written request of the registered owners of not less than 10% in principal amount of the then outstanding bonds, shall, 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 bonds, the Trustee may and upon written request of the registered owners of not less than 10% in principal amount of the then outstanding bonds, 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 the expenses of operation, maintenance and repair 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.

No registered owner of any of the outstanding bonds shall have any right to institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any power or right 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

registered owners of not less than 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 granted to the Trustee, 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. Such notification, request and offer of indemnity are, at the option of the Trustee, conditions precedent to the execution of any remedy. 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 thereunder except the manner herein described. All proceedings at law or in equity shall be instituted, had and maintained in the manner herein described and for the benefit of all registered owners of the outstanding bonds.

No remedy conferred upon or reserved to the Trustee or to the registered owners of the bonds is intended to be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or by law.

The Trustee may, and upon the written request of the registered owners of not less than 50% in principal amount of the 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 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, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the registered owners of such bonds, subject to the provisions of this Ordinance.

No delay or omission of the Trustee or 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 Trustee and to the registered owners of the bonds, respectively, may be

exercised from time to time and as often as may be deemed expedient.

In any proceeding to enforce the provisions of this Ordinance any plaintiff bondholder shall be entitled to recover from the City all costs of such proceeding, including reasonable attorneys' fees.

Section 15. (a) 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 these bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(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 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 (a) an extension of the maturity of the principal of or the interest on any bond, or (b) a reduction in the principal amount of any bond or the rate of interest thereon, or (c) the creation of a lien or pledge superior to the lien and pledge created by this Ordinance, or (d) a privilege or priority of any bond or bonds over any other bond or bonds, or (e) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 16. When the bonds have been executed, they shall be authenticated by the Trustee and the Trustee shall deliver the bonds to or at the direction of the Purchaser upon payment of the Purchase Price. The accrued interest shall be remitted to the City Treasurer for deposit into the Bond Fund. The expenses of issuing the bonds as set forth in the delivery instructions to the Trustee signed by the Mayor and City Recorder shall be paid from the Purchase Price. The sum of \$148,371 from the Purchase Price shall be deposited into the 1997 Subaccount in the Debt Service Reserve. The remainder of the Purchase Price shall be remitted to the City Treasurer for deposit into a special account in the name of the City designated "Water Construction Fund, Series 1997" (the "Construction Fund") in a depository or depositories designated by the Commission that are members of FDIC. The moneys in the

Construction Fund shall be invested in direct or fully guaranteed obligations of the United States of America ("Government Securities") or in time or certificates of deposit of banks, including the Trustee, which are insured by FDIC, or, if in excess of insurance coverage, collateralized by Government Securities. The moneys in the Construction Fund shall be disbursed solely in payment of the costs of accomplishing the Improvements, paying necessary expenses incidental thereto, paying interest during construction and paying expenses of issuing the bonds. Disbursements shall be on the basis of checks or requisitions which shall contain at least the following information: the person 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 person or persons designated by the Commission, and in the case of all items of expense over which the consulting engineer shall exercise supervision, each check or requisition shall be accompanied by a certificate signed by the consulting engineer (or by a representative thereof designated by the consulting engineer) 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. A depository of the Construction Fund shall be required to keep accurate records as to all payments made on the basis of requisitions, and the Commission shall be required to keep accurate records of all payments made on the basis of checks.

When the Improvements have been completed and all required expenses paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof, this fact shall, if moneys remain in the Construction Fund, be evidenced by a certificate signed by the Chairman of the Commission, which certificate shall state, among other things, the date of the completion and that all obligations payable from the Construction Fund have been discharged. A copy of the certificate shall be filed with the depository or depositories of the Construction Fund, and a copy with the Trustee, and upon receipt thereof the depository of the Construction Fund shall transfer any remaining balance to the Bond Fund for the purpose of redeeming the bonds.

Section 17. 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, provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of the State in City of Harrison v. Braswell, supra.

Section 18. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or conditions 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 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.

(b) The City shall assure that (i) not in excess of 10% of the Net Proceeds of the bonds is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the bonds during the term thereof is, under the terms of the bonds 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 moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the Net Proceeds of the bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the bonds during the term thereof is, under the terms of the bonds 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 5% of Net Proceeds of the bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements.

The City shall assure that not in excess of 5% of the Net Proceeds of the bonds are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this subsection (b), the following terms shall have the following meanings:

"Net Proceeds" means the face amount of the bonds, plus accrued interest and less the deposit into the Debt Service Reserve from proceeds of the bonds.

"Private Business Use" means use 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 governmental unit and use as a member of the general public.

(c) The bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of the Code. The City represents 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 1997 will not exceed \$10,000,000.

(d) 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. Nothing in this Section shall prohibit investments in bonds issued by the United States Treasury.

(e) 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.

(f) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Bond Fund to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Non-purpose Investments (as therein defined) attributable to the bonds, other than investments attributable to such excess over (B) the amount which would have been earned if such Non-purpose Investments attributable to the bonds were invested at a rate equal to the Yield (as defined in the Code) on the bonds, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant to advise the City in making the determination required to comply with this subsection. Anything herein to the contrary notwithstanding, the City need not comply with this provision if in the opinion of Bond Counsel filed with the Trustee, the failure to comply would not affect the tax-exempt status of interest on the bonds for federal income tax purposes.

(g) The City covenants that it will not reimburse itself from proceeds of the bonds for costs paid prior to the date the bonds are issued except in compliance with United States Treasury Regulation No. 1.150-2.

Section 19. (a) 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 registered owners of not less than 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 giving 60 days' notice in writing to the City Recorder and to the registered owners of the bonds, and the majority in value of the registered owners of the outstanding bonds at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the majority in value of the registered 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 registered owners of the outstanding bonds shall fail to fill a vacancy within 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 registered 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.

(b) Every successor Trustee appointed pursuant to this Section shall be a trust company or bank in good standing located in or incorporated under the laws of the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$5,000,000.

(c) Any resignation by the Trustee shall not be effective until the appointment of a successor Trustee under this Section.

Section 20. It is understood and agreed that the Commission, acting for and on behalf of the City, has custody of and control over the System, operates, maintains and repairs the System and collects and handles Revenues. Therefore, it is understood and agreed that even though there are some express references to the Commission, all references herein to the City shall, when appropriate in view of the authority and responsibility of the Commission, be construed to mean and include the Commission.

Section 21. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the

Disclosure Agreement on behalf of the City. The Mayor is authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement.

Section 22. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Section 23. All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: April 22, 1997.

ATTEST:

Bobbie Bennett, cma
City Recorder

(SEAL)

APPROVED:

James B. Brown
Mayor

CERTIFICATE

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. 97-248, adopted at a special session of the Council of the City of Clinton, Arkansas, held at the regular meeting place of the Council in the City at 5:00 p.m., on the 22nd day of April, 1997, and that said Ordinance is of record in Ordinance Record Book No. _____, Page _____, now in my possession.

GIVEN under my hand and seal this 22nd day of April, 1997.


City Recorder

(SEAL)

NOTICE OF AND CONSENT TO MEETING OF COUNCIL

The undersigned hereby acknowledges receipt of official and timely notice of a meeting of the City Council of the City of Clinton, Arkansas, to be held on April 22, 1997, at 5:00 o'clock p.m., at the regular meeting place of the Council in the City of Clinton, Arkansas, the purpose of the meeting being to consider an Ordinance authorizing the issuance of water and sewer revenue bonds, and for the transaction of such other business as may properly come before the Council.

The undersigned further consent to the meeting at the time and place and for the purposes hereinabove set forth and hereby ratify all action taken at said meeting for said purposes.

James Beaver
Mayor

Bobbie Bennett, cmc
City Recorder

Harold Weaver

Don Hensley

Al Davis

Don Crow
Jay Johnson

Melvin Emerson