

ORDINANCE NO. 2003-12

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS, AND IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY OF BROOKLAND, ARKANSAS; AUTHORIZING THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE CAPITAL IMPROVEMENT BOND, SERIES 2003, BY THE CITY IN THE PRINCIPAL AMOUNT OF \$601,200 FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF THE CONSTRUCTION OF THE IMPROVEMENTS; PROVIDING FOR PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council (the "Council") of the City of Brookland, Arkansas (the "City"), a city of the second class of the State of Arkansas, has undertaken the construction of extensions, betterments, and improvements to the sewer system of the City, which is owned and operated by the City together with the City's waterworks as a single, integrated, municipal undertaking (hereinafter referred to as the "System"); and

WHEREAS, the Council has obtained an engineering report on providing extensions, betterments, and improvements to the City's sewer system (the "Improvements") and estimates of the cost of the Improvements, which report is on file in the office of the City Recorder/Treasurer; and

WHEREAS, the estimated cost of the Improvements (including the furnishing of all labor, materials, and other services in connection with the completion of the Improvements) is approximately \$1,070,000; and

WHEREAS, the City is authorized under Amendment No. 65 to the Constitution of the State of Arkansas, Act No. 131 of the 1933 General Assembly, as amended, and codified as Arkansas Code Annotated §§ 14-234-201 to -218 (Repl. 1998 & Supp. 2003) ("Act 131"), Act No. 132 of the 1933 General Assembly of the State of Arkansas, as amended, and codified as Arkansas Code Annotated §§ 14-235-201 to -225 (Repl. 1998 & Supp. 2003) ("Act 132"), and applicable decisions of the Supreme Court of Arkansas, including particularly *City of Harrison v. Braswell*, 209 Ark. 1094, 194 S.W.2d 12 (1946), to issue and sell revenue bonds for the purpose of financing the cost of constructing the Improvements, including printing, legal, and other expenses incident to the issuance of the bonds; and

WHEREAS, to secure a portion of the funds necessary to finance the construction of the Improvements, the Council has determined to issue its Water and Sewer Revenue Capital Improvement Bond, Series 2003 (the "Series 2003 Bond"), in principal amount of \$601,200, hereinafter authorized; and

WHEREAS, the City and the United States Department of Agriculture Rural Development ("Rural Development") have entered into a Loan Agreement whereby Rural Development has

agreed to purchase at par \$601,200 in principal amount of the Series 2003 Bond, at an interest rate of 4.50 percent per annum, or such lower rate as shall be in effect at the time of loan closing; and

WHEREAS, the City is authorized, under the provisions of Act 131 and Act 132, to accept the offer of Rural Development; and

WHEREAS, there is outstanding the following indebtedness of the City: (a) Waterworks Revenue Improvement Bond, dated January 19, 1966, issued in the original principal amount of \$107,000 (the "1966 Bond"), under the authority of Ordinance No. 1965-3 of the City (the "1966 Bond Ordinance"); (b) Water and Sewer Revenue Bond, dated November 19, 1979, issued in the original principal amount of \$246,100 (the "1979 Bond"), under the authority of Ordinance No. 79-3 of the City (the "1979 Bond Ordinance"); (c) Water and Sewer Revenue Bond, dated July 7, 1993, issued in the original principal amount of \$93,950 (the "1993 Bond"), under the authority of Ordinance No. 1993-2 of the City (the "1993 Bond Ordinance"); (d) Loan No. Bond-92A38-L, in the original principal amount of \$81,000 (the "1999A Loan"), payment of which is secured under a Lease-Purchase Agreement dated as of February 1, 1999, by and between the City and the Arkansas Soil and Water Conservation Commission (the "1999A Agreement"); (e) Loan No. Bond-97B03, in the original principal amount of \$360,824.74 (the "1999B Loan"), payment of which is secured under a Lease-Purchase Agreement dated as of February 1, 1999, by and between the Arkansas Soil and (the "1999B Loan Agreement"); and (f) Loan No. 00097-WSSW-D, in the original principal amount of \$51,500 (the "2001 Loan"), made pursuant to a Loan Agreement between the City and the Arkansas Soil and Water Conservation Commission, dated as of June 1, 2001 (the "2001 Loan Agreement") (the 1966 Bond, the 1979 Bond, the 1993 Bond, the 1999A Loan, the 1999B Loan, and the 2001 Loan are hereafter collectively referred to as the "Prior Indebtedness"; the 1966 Bond Ordinance, the 1979 Bond Ordinance, and the 1993 Bond Ordinance are collectively called the "Prior Ordinances"; and the 1999A Agreement, the 1999B Agreement, and the 2001 Loan Agreement are collectively called the "Prior Agreements"); and

WHEREAS, the security for and source of payment of the Series 2003 Bond will be subordinate and subject to the priority of payment of the Prior Indebtedness;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BROOKLAND, ARKANSAS:

**Section 1.** That the Improvements be accomplished. The Mayor and City Recorder/Treasurer are hereby authorized to take, or cause to be taken, all action necessary to accomplish the construction and execute all required contracts and documents.

**Section 2.** That the offer of Rural Development of par for \$601,200 in principal amount of the Series 2003 Bond, bearing interest at the rate of 4.50 percent per annum, or such lower rate as shall be in effect at the time of loan closing, be, and is hereby, accepted and the Series 2003 Bond is hereby sold to Rural Development.

**Section 3.** That the Council hereby finds and declares that the period of usefulness of the Improvements after completion thereof will be more than 40 years.

**Section 4.** That under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 and Act 131, as construed by the Arkansas Supreme Court in

*City of Harrison v. Braswell*, decided April 15, 1946, and Act 132, the City is hereby authorized to borrow the sum of \$601,200 from Rural Development, and issue as evidence thereof its "Water and Sewer Revenue Capital Improvement Bond, Series 2003" (the "Series 2003 Bond"). The principal of the Series 2003 Bond outstanding from time to time shall bear interest at the rate of 4.50 percent per annum (or such lower rate as shall be in effect at the time of loan closing), with interest payable one year following the date thereof and with principal and interest payable in monthly amortized installments beginning one month following the first anniversary of the date thereof, until the face amount of the Series 2003 Bond plus interest thereon is fully paid, except that the final payment of the entire indebtedness if not sooner paid shall be due and payable 40 years from the date of the Series 2003 Bond, subject to prepayment prior to maturity as provided in the form of the Series 2003 Bond.

The Series 2003 Bond shall be dated the date of its delivery and payment of the par value thereof (or, if purchased in installments as herein provided, payment of the first installment). The Series 2003 Bond shall be issued in fully registered typewritten form without interest coupons, as one fully registered typewritten bond No. R-1. The Series 2003 Bond shall be registered as to principal and interest by the City Recorder in a bond registration book and a certificate of such registration shall be endorsed on the Series 2003 Bond.

Payment of principal and interest shall be made to the registered owner of the Series 2003 Bond without presentation or surrender of the Series 2003 Bond (except upon final payment). Payments of principal and interest on the Series 2003 Bond may be electronically debited from the 2003 Bond Fund (defined below) on the date that payment is due, or be made by check or draft mailed to the registered owner of the bond. Such payments shall discharge the obligation of the City to the extent thereof. The City Recorder shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the Series 2003 Bond has been fully paid, the Series 2003 Bond shall be canceled and delivered to the City Recorder.

The security for and source of payment of the Series 2003 Bond shall be subordinate and subject to the priority of the Prior Indebtedness.

**Section 5.** That the Series 2003 Bond shall be executed on behalf of the City by the Mayor and City Recorder and shall have impressed thereon the seal of the City. In case the person holding the office of Mayor or City Recorder, whose signature shall appear on the Series 2003 Bond, shall cease to be such officer before the delivery of the Series 2003 Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery of the Series 2003 Bond. The principal of and interest on the Series 2003 Bond is secured by and payable solely out of the 2003 Water and Sewer Revenue Capital Improvement Bond and Interest Sinking Fund, as hereafter set forth. The Series 2003 Bond shall be a valid claim of the bondholder only against such fund and the revenues pledged to such fund, which revenues are hereby pledged and mortgaged for the equal and ratable payment of the principal of and interest on the Series 2003 Bond, and shall be used for no other purpose except as in this Ordinance specifically provided. The

principal of and interest on the Series 2003 Bond shall not constitute an indebtedness of the City within any constitutional or statutory debt limitation or restriction.

**Section 6.** That the Series 2003 Bond shall be in substantially the following form and that the Mayor and City Recorder are hereby authorized and directed to make all the recitals contained therein:

[FORM OF SINGLE REGISTERED SERIES 2003 BOND]  
[TO BE TYPEWRITTEN]

REGISTERED  
No. R-1

REGISTERED  
\*\*\$601,200\*\*

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF CRAIGHEAD  
CITY OF BROOKLAND  
WATER AND SEWER REVENUE CAPITAL IMPROVEMENT BOND, SERIES 2003

KNOW ALL MEN BY THESE PRESENTS:

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

**\$601,200**

(or so much of the principal thereof as has been paid in the purchase of this Bond as noted on the schedule attached hereto and made a part hereof) plus interest on the unpaid balance at the rate of \_\_\_\_\_ percent (\_\_\_%) per annum from the date hereof (or, if this Bond is purchased in installments, from the date of each advance). The said principal and interest shall be payable in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of debts due in the United States of America and shall be payable in the following installments on or before the following dates: interest only on the first anniversary of the date of this bond; and \$2,730 on the \_\_\_\_ day of the 13th month following the date of this bond and monthly thereafter on the same date of each month until principal and interest are fully paid, except that the final installment on the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable 40 years from the date of this bond.

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, as provided in Section 4 of the Authorizing Ordinance (defined below), and such payments shall fully discharge the obligations of the City to the extent of the payments so made.

This bond is issued for the purpose of aiding in the construction of extensions, betterments, and improvements to the sewer system of the City under and pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Amendment No. 65 to the Constitution of the State of Arkansas, Act No. 131 of the 1933 General Assembly, as amended, and

codified as Arkansas Code Annotated §§ 14-234-201 to -218 (Repl. 1998 & Supp. 2003) ("Act 131"), Act No. 132 of the 1933 General Assembly of the State of Arkansas, as amended, and codified as Arkansas Code Annotated §§ 14-235-201 to -225 (Repl. 1998 & Supp. 2003) ("Act 132"), 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 an ordinance of the City Council of the City duly passed on \_\_\_\_\_, 2003 (the "Authorizing Ordinance"). Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the registered owner of this bond.

The City has designated this bond as a "qualified tax-exempt obligation" for purposes of section 265(b) of the Internal Revenue Code of 1986, as amended.

This bond does not constitute an indebtedness of the City within any constitutional or statutory limitation or provision, and the taxing power of the City or the State of Arkansas or any other subdivision thereof is not pledged to the payment of the principal of or interest on this bond. This bond is a special obligation payable solely from revenues derived from the operation of the waterworks and sewer system of the City (the "System"). The pledge of revenues to the payment of this bond is subordinate to the pledge thereof to the payment of the City's (a) Waterworks Revenue Improvement Bond, dated January 19, 1966; (b) Water and Sewer Revenue Bond, dated November 19, 1979; (c) Water and Sewer Revenue Bond, dated July 7, 1993; (d) Loan No. Bond-92A38-L, in the original principal amount of \$81,000, payment of which is secured under a Lease-Purchase Agreement by and between the City and the Arkansas Soil and Water Conservation Commission dated as of February 1, 1999; (e) Loan No. Bond-97B03, in the original principal amount of \$360,824.74, payment of which is secured under a Lease-Purchase Agreement by and between the City and the Arkansas Soil and Water Conservation Commission dated as of February 1, 1999; and (f) Loan No. 00097-WSSW-D, made pursuant to a Loan Agreement between the City and the Arkansas Soil and Water Conservation Commission, dated as of June 1, 2001. A sufficient amount of such revenues has been duly set aside and pledged as a special fund for that purpose and identified as the "2003 Water and Sewer Revenue Capital Improvement Bond and Interest Sinking Fund," created by the Authorizing Ordinance. In the Authorizing Ordinance the City has covenanted and agreed to maintain rates to be charged for the use of and services rendered by the System, which rates shall be sufficient at all times to provide for the payment of the principal of and interest on all the outstanding bonds and indebtedness to which such revenues are pledged as the same become due and payable, to provide and maintain debt service reserves, to provide for the creation of a depreciation fund for necessary replacements and repairs to the System, and to provide for the payment of the reasonable expenses of operation and maintenance of the System, all as set forth in the Authorizing Ordinance.

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

This bond may be transferred only upon the registration books of the City maintained by the City Recorder, and upon assignment the assignor shall promptly notify the City Recorder by registered mail, and the assignee shall surrender this bond to the City Recorder for transfer on the

registration books. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the payment record maintained by the City Recorder), prior to such surrender for transfer.

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


This bond is expressly made negotiable under Act 131 and Act 132 and is issued with the intent that the laws of the State of Arkansas will govern its construction.

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

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

IN WITNESS WHEREOF, the City of Brookland, Arkansas, by its City Council has caused this bond to be signed by the Mayor and City Recorder thereof and sealed with the corporate seal of said City, all as of October 14, 2003.

CITY OF BROOKLAND, ARKANSAS

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder



TREASURER'S CERTIFICATE

Certified to be the bond mentioned and described herein.



Beth Foster  
Treasurer

REGISTRATION CERTIFICATE

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

**Date of Registration**

**Name of Registered Owner**

**Signature of City Recorder**

_____	<u>United States of America</u>	_____
_____	_____	_____
_____	_____	_____

CERTIFICATE OF PAYMENT

The United States of America, acting through the Department of Agriculture Rural Development, acknowledges that the purchase price of the Bond to which this certificate is attached has been paid in installments in the amount and on the dates set forth below as endorsed by the signature of its authorized officer.

**Amount Paid**

**Date Paid**

**Signature of Authorized Officer**

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[End of form of bond]

**Section 7.** (a) That the rates for water set forth by Ordinance No. 1998-16 of the City duly adopted by the Council on December 8, 1998, and for the services of the City's sewer system set forth by Ordinance No. 2003-9 of the City duly adopted by the Council on October 14, 2003 are hereby confirmed. The said rates are deemed reasonable and necessary minimum rates to be charged. The City covenants and agrees that the rates established will produce gross revenues at least sufficient to pay operation and maintenance expenses of the System, pay the principal of and interest on all outstanding bonds and indebtedness to which System revenues are pledged, as the same become due, create and maintain debt service reserves, and make the required deposits for depreciation as specified by the Prior Ordinances, Prior Agreements, and this Ordinance. The City covenants always to maintain rates (including increases as necessary) which will provide for the maintenance of the funds hereinafter described. The rates shall never be reduced while any of the Series 2003 Bond is outstanding unless there is obtained from a certified public accountant not in the regular employ of the City, a certificate reciting the opinion that the proposed new rates will provide sufficient net revenues (net revenues being gross revenues to be derived from the System within the next twelve months less the reasonably anticipated cost of operation and maintenance for the next twelve months and less the required deposits for depreciation of the System for the next twelve months) equal to not less than 120 percent of the maximum amount that will become due in any year thereafter for principal and interest on all bonds and indebtedness then outstanding to which System revenues are pledged; and the City covenants that the rates shall, when necessary, be increased in an amount sufficient to provide a minimum monthly charge not less than the cost to the City for operation and maintenance of the System.

(b) 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 service or facilities so afforded shall be charged against the City or such department, agency, or instrumentality and shall be paid for as the charges accrue. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be used and accounted for in the same manner as the other revenues derived from the operation of the System.

**Section 8.** That the Treasurer of the City shall be the custodian of the revenues derived from the System and shall give sufficient bond for the faithful discharge of all duties of such custodian (the amount of such bond to be, at a minimum, equal to the annual debt service payment for all outstanding indebtedness of the City owed to Rural Development, but in any event no less than the total funds at any time in the hands of the Treasurer and to be approved by the City Council). A like bond in a sufficient amount to be approved by the Council shall be required of each person handling funds of the System. The System shall be continuously operated as a revenue producing undertaking. All moneys received by the Treasurer shall be deposited by him or her in such depository or depositories for the City as may be lawfully designated from time to time by the Council; provided that each depository must hold membership in the Federal Deposit Insurance Corporation (the "FDIC"). All deposits shall be in the name of the City and shall be so designated to indicate the particular fund to which the revenues belong. Any deposit in excess of the amount insured by the FDIC shall be secured by bonds or other direct or fully guaranteed obligations of the United States of America unless otherwise invested as herein authorized.

**Section 9.** That all of the provisions of the Prior Ordinances and Prior Agreements (except those provisions clearly inapplicable hereto) including, without limitation, the provisions pertaining



to the collection and the handling of revenues and funds, to the operation, maintenance, and care of the System, to the rights and remedies of the holders of the Prior Indebtedness and to the depreciation of the System, are hereby made applicable hereto and are incorporated herein by reference as though fully set forth at this point, with the effect the applicable provisions shall continue in full force and effect even after the payment of the Prior Indebtedness and until the Series 2003 Bond is paid, or provision made therefor. The Series 2003 Bond shall be secured by and payable from System revenues, such pledge to be subordinate to the pledge thereof in favor of the Prior Indebtedness.

**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 System or any substantial portion thereof without the prior written consent of the owner of the Series 2003 Bond; 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.** (a) That when the Prior Indebtedness has been paid, principal and interest, or provision made for its payment, then the transfer into each bond fund (or any other such fund designated for the purpose of paying debt service on the Prior Indebtedness) directed by the Prior Ordinances and the Prior Agreements authorizing the same shall cease. Any balance remaining in any such bond fund (or other such fund designated for the purpose of paying debt service on the Prior Indebtedness) following defeasance of any or all of the Prior Indebtedness shall be transferred to the Water and Sewer Revenue Fund created and being maintained pursuant to the Prior Ordinances and the Prior Agreements (the "Revenue Fund").

(b) Notwithstanding any provision to the contrary in the Prior Ordinances and the Prior Agreements or in other ordinances previously adopted, or herein, payments required to be made for the principal and interest on the Prior Indebtedness or on the Series 2003 Bond or for the establishment and maintenance of a debt service reserve shall enjoy priority over any rebates or credits to users of the System, and no such rebate or credit shall be paid or effected to the extent that it would impair the ability of the City to make deposits in the bond funds (or other such funds designated for the purpose of repaying Prior Indebtedness) established pursuant to the Prior Ordinances or the Prior Agreements, or the 2003 Bond Fund established pursuant hereto.

**Section 12.** (a) That after provision has been made (i) for the reasonable and necessary expenses of the operation and maintenance of the System; (ii) for payment of principal of and interest, and related fees with respect to the Prior Indebtedness; (iii) for all required deposits to debt service reserves; and (iv) for depreciation of the System, all pursuant to the Prior Ordinances and the Prior Agreements, there shall be paid by the City Treasurer from the Revenue Fund and deposited into a special fund which is hereby created and designated the "2003 Water and Sewer Revenue Capital Improvement Bond and Interest Sinking Fund" (the "2003 Bond Fund") the sums in the amounts and at the times as hereinafter stated in subsection (b) for the purpose of providing funds for the payment of the principal of and interest on the Series 2003 Bond herein authorized as it matures and to establish a debt service reserve. The Revenue Fund shall continue to exist notwithstanding payment in full of the Prior Indebtedness.

(b) That there shall be paid by the City Treasurer from the Revenue Fund and deposited into the 2003 Bond Fund the following amounts (or such lesser whole dollar amounts as shall be required to amortize the loan over a period of 468 months and to establish a debt service reserve with monthly payments equal to 10% of each monthly amortization payment in the event the rate of interest on the bond shall be less than 4.50 percent per annum):

(i) on the first business day of the month in which falls the first anniversary date of the Series 2003 Bond, a sum equal to the installment of interest next due on the Series 2003 Bond; and

(ii)(A) beginning on the first business day of the first month following the first anniversary date of the Series 2003 Bond and continuing until all the principal of the Series 2003 Bond and the interest thereon have been paid in full, or provision is made for such payment, the sum of \$2,730 plus

(B) beginning on the first business day of the first month following the first anniversary date of the Series 2003 Bond, the sum of \$273, to be accumulated over a period of ten years in the total amount of \$32,760.

(c) That if the moneys in the Revenue Fund are insufficient to make the required payment on or before the first business day of the following month into the 2003 Bond Fund, then the amount of any deficiency in the payment made shall be added to the amount otherwise required to be paid into the 2003 Bond Fund on or before the first day of the next month.

(d) That if, for any reason, the City Treasurer shall fail at any time to make any of the required payments into the 2003 Bond Fund, or if for any reason the 2003 Bond Fund shall be insufficient at any time to make the required payments for principal and interest as due, any sums then held in the debt service reserve shall be used to the extent necessary in the payment of the interest on and the principal of the Series 2003 Bond. The debt service reserve shall be used solely as herein provided.

(e) That when the moneys held in the 2003 Bond Fund, including the debt service reserve, shall be and remain sufficient to pay the principal of and interest on all of the Series 2003 Bond then outstanding, the City Treasurer shall not be obligated to make any further payments into the 2003 Bond Fund.

(f) That all moneys in the 2003 Bond Fund shall be used solely for the purpose of paying the principal of and interest on the Series 2003 Bond.

(g) That it shall be the duty of the City Treasurer to withdraw from the 2003 Bond Fund on or before the due date of any installment of interest or of principal and interest and to pay to the registered owner an amount equal to the amount of such installment, and no withdrawal of funds from the 2003 Bond Fund shall be made for any other purpose except as otherwise authorized by this Ordinance. Deposits in the 2003 Bond Fund shall be at the sole risk of the City and shall not operate as a payment of the Series 2003 Bond or interest until so applied.

(h) That the Series 2003 Bond shall be specifically secured by a pledge of all of the revenues required to be placed into the 2003 Bond Fund. This pledge in favor of the Series 2003 Bond 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 13.** That any surplus in the Revenue Fund, after making full provision for the payments hereinabove provided for, may be used, at the option of the City, for the redemption of the Series 2003 Bond prior to maturity in accordance with its redemption provisions, for extensions, betterments, and improvements to the System, for a refund to ratepayers, or for any other lawful purpose, including without limitation redemption of the Prior Indebtedness.

**Section 14.** Except as otherwise provided herein, payments from the respective funds shall be made by check or voucher, signed by the City Treasurer and the Mayor, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

**Section 15.** That the Series 2003 Bond paid either at or before maturity shall be canceled and shall not be reissued.

**Section 16.** That the System shall be operated on a calendar year basis, beginning January 1 and ending December 31 of each year.

**Section 17.** That the principal and interest installments may be prepaid prior to maturity as provided in the bond form in Section 6 hereof.

**Section 18.** That as long as the Series 2003 Bond is outstanding, the City shall not issue or attempt to issue any bonds having or claimed to be entitled to a priority of lien on the revenues of the System over the lien securing the Series 2003 Bond, including any and all future extensions, betterments, and improvements to the System.

Nothing herein shall be construed in any manner to prevent the issuance by the City of additional revenue bonds to finance or pay the cost of constructing extensions, betterments, and improvements to the System; however, any such additional bonds shall not be issued on a parity with the outstanding Series 2003 Bond unless and until there shall have been procured and filed in the office of the City Recorder a statement by a certified public accountant not in the regular employ of the City reciting the opinion that the net revenues (net revenues being gross revenues less operation and maintenance expenses) of the System for the fiscal year preceding the year in which such parity bonds are to be issued were not less than 120 percent of the average annual debt service requirements (principal and interest) on all outstanding bonds and indebtedness to which the revenues of the System are pledged and the bonds then proposed to be issued.

The additional bonds, the issuance of which is restricted and conditioned by this Section, shall not be deemed to mean bonds the security and source of payment of which are subordinate and subject to the priority of the Series 2003 Bond.

The provisions of this Section may be waived by the holders of 75 percent in principal amount of the Series 2003 Bond at any time outstanding.

**Section 19.** That it is covenanted and agreed by the City with the owner of the Series 2003 Bond 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 and by the Prior Ordinances, the Prior

Agreements, and this Ordinance, including, without limitation, the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System and segregating the revenues of the System and applying them to the respective funds created in the Prior Bond Ordinances, the Prior Agreements, and herein.

**Section 20.** That the City will keep proper records, books, and accounts relating to the operation of the System, which shall be kept separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the operation of the System. Such books shall be available for inspection by the owner of the Series 2003 Bond, or the agent or the representative of any owner of the Series 2003 Bond, at reasonable times and under reasonable circumstances. If required by Rural Development (or if requested in writing by any registered owner of the Series 2003 Bond, if Rural Development is not the registered owner of such bond), the City agrees to have System records audited by an independent certified public accountant not in the regular employ of the City at least once each year, and a copy of such audit shall be made available to Rural Development or other registered owner of the Series 2003 Bond no later than 120 days after the end of the fiscal year. If not so required (or, if Rural Development is not the registered owner of the Series 2003 Bond, no written request for annual audit reports has been made pursuant to the provisions of the preceding sentence), the City shall furnish annual financial statements of the System consisting of (i) a balance sheet and (ii) statements of income and expense to the holder or holders of the Series 2003 Bond within 60 days after the end of the fiscal year.

The reports referred to above shall cover the operations of the System for all of the last ensuing fiscal year. In the event the City fails or refuses to furnish or cause such reports to be furnished, any registered owner of the Series 2003 Bond may have the reports made, and the cost thereof shall be charged against the Water and Sewer Operation and Maintenance Fund created by the 1979 Bond Ordinance and being maintained pursuant to this Ordinance (the "Operation and Maintenance Fund").

In addition to the annual reports provided for above, the City will cause statements of income and expense and balance sheets for the System to be prepared quarterly and submitted to the bondholders during the first three years of operation following the date of the Series 2003 Bond and thereafter at any time there is a default in payment of principal of or interest on the Series 2003 Bond.

**Section 21.** That the City covenants and agrees that it will maintain the System in good condition and will operate the System in an efficient manner and at reasonable cost. While any Series 2003 Bond is 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, major items of equipment and machinery as well as pumps, electrical items, and all aboveground structures of the System (except reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured) against loss or damage thereto from fire, lightning, tornado, winds, riot, strike, civil commotion, malicious damage, explosion, and against loss or damage from any other causes customarily insured against by private companies engaged in a similar type of business. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement, or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction,

replacement, and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Revenue Fund, and if such proceeds shall be insufficient for such purposes, the deficiency shall be supplied, first, from moneys in the Water and Sewer Depreciation Fund (the "Depreciation Fund") created by the 1979 Bond Ordinance and being maintained pursuant to this Ordinance, and second, from moneys in the Operation and Maintenance Fund. Nothing herein shall be construed as requiring the City to expend any funds for reconstruction, replacement, or repair of the System or for operation and maintenance thereof, or for premiums on its insurance which are derived from sources other than insurance proceeds or revenues derived from the operation of the System, but nothing herein shall be construed as preventing the City from doing so.

It is further covenanted and agreed by the City with the holder or holders of the Series 2003 Bond that the City will maintain public liability insurance covering the City's ownership and operation of the System with maximum liability limits of not less than \$25,000 for personal injury or death of a single person, \$50,000 for personal injury or death of more than one person in a single accident or occurrence, and \$15,000 for property damage arising from a single accident or occurrence. The City further agrees to carry workmen's compensation insurance for all its employees in accordance with the laws of the State of Arkansas and to procure and maintain flood insurance on any structure of the System which is located in a floodplain (other than the intake structures and lines).

**Section 22.** That there shall be a statutory mortgage lien upon the System, which shall exist in favor of the owners and holders of the outstanding Series 2003 Bond, and each of them, until payment in full of the interest on and principal of such bond; 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*, 209 Ark. 1094, 194 S.W.2d 12 (1946).

**Section 23.** (a) That if there be any default in the payment of the principal of or interest on the Series 2003 Bond, or if the City defaults in any 2003 Bond Fund requirement or in the performance of any of the other covenants contained and set forth in this Ordinance, the registered owners of a majority in principal amount of the Series 2003 Bond then outstanding may, by proper suit, compel the performance of the duties of the officials or the City as set forth in Act 131, Act 132, and in this Ordinance. In the case of a default in the payment of the principal of and interest on the outstanding Series 2003 Bond, or if the City fails to comply with any other obligation which it herein assumes, the registered owners may also apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and collect (or by mandatory injunction or otherwise cause to be charged and collected) rates sufficient to provide for the payment of the principal and interest outstanding and to apply the revenues in conformity with the provisions of Act 131, Act 132, and 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) That it is understood and intended that no one or more registered owners of the Series 2003 Bond hereby secured shall have any right in any manner whatever by his, her, or their action to affect, disturb, or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the outstanding Series 2003 Bond, and that any

individual rights or action or other right given to one or more of such registered owners by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) That no remedy conferred upon or reserved to the registered owners of the Series 2003 Bond is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or available under the law.

(d) That no delay or omission of any registered owners of the Series 2003 Bond 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 Series 2003 Bond may be exercised from time to time and as often as may be deemed expedient.

(e) That the registered owners of not less than a majority in principal amount of Series 2003 Bond then outstanding may waive any default which shall have been remedied before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

**Section 24.** That when the Series 2003 Bond herein authorized have been executed by the Mayor and City Recorder and the seal of the City impressed, as herein provided, it shall be delivered to the purchaser upon payment of the purchase price (or, if purchased in installments as herein provided, payment of the first installment). The proceeds from the sale of the Series 2003 Bond shall be disbursed as follows:

(a) The amount necessary to provide for the payment of interest that will become due during the construction period shall be deposited in the 2003 Bond Fund.

(b) The balance of the proceeds shall be deposited in a special account of the City designated "2003 Construction Fund" (the "2003 Construction Fund") in a bank that is a member of the FDIC and used for the payment of the costs of construction of the Improvements and paying necessary expenses incidental thereto, including legal and engineering fees and expenses. Moneys in the 2003 Construction Fund in excess of the amount insured by the FDIC shall be continuously secured by bonds or other direct or fully guaranteed obligations of the United States of America, except that any moneys invested as hereafter authorized need not be so secured.

The moneys in the 2003 Construction Fund shall be disbursed solely in payment of the cost of the construction of the Improvements, paying necessary expenses incidental thereto, and paying expenses of issuing the Series 2003 Bond. Disbursements shall be on the basis of checks or requisitions which shall contain at least the following information: the person, firm, or corporation to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each check or requisition must be signed by the individual occupying the managing office of the System, and in the case of all items of expense over which the consulting engineers shall exercise supervision (which shall include all expenses except engineering fees, legal fees, and expenses pertaining to the issuance of the Series 2003 Bond), each check or requisition shall be accompanied by a certificate signed by the consulting engineers (or by a representative

thereof designated by the consulting engineers), certifying approval thereof. In the case of requisitions, the depository shall issue its check upon the 2003 Construction Fund payable to the person, firm, or corporation designated in the requisition. The depository of the 2003 Construction Fund shall be required to keep records as to all payments made on the basis of requisitions, and the managing officer of the System shall keep records of all payments made on the basis of checks.

When the construction of the Improvements shall have been completed, this fact shall be evidenced by the filing with the depository for the 2003 Construction Fund of a certificate signed by the managing officer of the System and the consulting engineer, which certificate shall state the date of such completion and shall state that all obligations which are payable from the 2003 Construction Fund have been discharged. Upon receipt of the above certificate the depository for the 2003 Construction Fund shall pay or transfer any remaining balance pursuant to the written direction or check signed by the managing officer of the System and one other person designated by the Council of the City with any such remaining balance to be transferred into the 2003 Bond Fund and applied immediately to the prepayment of Series 2003 Bond. The City shall require the depository to execute an appropriate deposit agreement embodying the substance of the provisions of this Section.

**Section 25.** (a) That moneys held for the credit of the 2003 Construction Fund which exceed the estimated disbursements on account of the Improvements for the next 90 days shall, as nearly as may be practicable, be continuously invested and reinvested in direct obligations of, or obligations the principal of and interest on which are fully guaranteed by, the United States of America ("U.S. Obligations"), which mature, or which shall be subject to redemption by the holder or registered owner at the option of the holder or registered owner, not later than the date or dates when the moneys shall be needed for Improvements disbursements. Interest earnings on moneys in the Construction Fund shall be deposited in the Construction Fund.

(b) That moneys held for the credit of the debt service reserve in the 2003 Bond Fund shall be continuously invested and reinvested in U.S. Obligations which shall mature, or which shall be subject to redemption by the holder or registered owner thereof, at the option of such holder or registered owner, not later than ten years after the date of investment; provided, however, that moneys in the debt service reserve in the 2003 Bond Fund in excess of the sum which is equal to the least of (1) 10% of the original principal amount of the Series 2003 Bond, (2) 125% of the average annual debt service payment on the Series 2003 Bond, and (3) 100% of the maximum annual debt service payable on the Series 2003 Bond) shall not be invested at a yield that is in excess of the yield on the Series 2003 Bond.

(c) That moneys held for the credit of any other fund established or referred to herein may, at the option of the City, be invested and reinvested by the City in U.S. Obligations which shall mature, or which shall be subject to redemption by the holder or registered owner thereof at the option of such holder or registered owner, not later than the date or dates when the moneys held for the credit of the particular fund will be required for the purpose intended.

(d) That obligations so purchased as an investment of moneys in any such 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 investment shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund..



(e) That moneys so invested in U.S. Obligations need not be secured by the depository bank.

**Section 26.** 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 Series 2003 Bond to be subject to federal income taxation. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Series 2003 Bond will not be used directly or indirectly in such manner as to cause the Series 2003 Bond to be treated as an "arbitrage bond" within the meaning of section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

**Section 27.** That in the event the office of Mayor or City Recorder/Treasurer of the City shall be abolished, or if any 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 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 succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations, and duties shall be imposed by law. In this regard, if the City should ever fail to maintain the office of City Treasurer, the duties of the City Treasurer hereunder shall be performed by the City Recorder.

**Section 28.** That the provisions of this Ordinance shall constitute a binding contract between the City and the registered owners of the outstanding Series 2003 Bond issued hereunder, and the City will at all times strictly adhere to the terms and provisions hereof and fully discharge all of its obligations hereunder. Subject to the terms and provisions contained in this Section and not otherwise, the registered owners of not less than 75 percent in aggregate principal amount of the Series 2003 Bond then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting without the consent of the registered owners of all of the outstanding Series 2003 Bond (a) an extension of the maturity of the principal of or interest on the Series 2003 Bond issued hereunder, or (b) a reduction in the principal amount of the Series 2003 Bond or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of revenues other than as expressly authorized by the appropriate provisions of this Ordinance as now adopted, or (d) a reduction in the aggregate principal amount of the Series 2003 Bond required for consent to such supplemental ordinance.

**Section 29.** That all terms used in this Section shall have the meanings ascribed thereto in the Code. The City represents, warrants, and covenants that:

(a) The City has not used or permitted the use of, and will not use or permit the use of, the Improvements in such manner as to cause the Series 2003 Bond to be "private activity bonds" within the meaning of section 141 of the Code.

(b) None of the gross proceeds of the Series 2003 Bond (hereby defined to include the original proceeds of the sale of the Series 2003 Bond, amounts received as a result of investing the original proceeds, and amounts used to pay principal of and interest on the Series 2003 Bond) will be used (directly or indirectly) either (A) to make or finance loans to persons other than governmental units, or (B) in any trade or business carried on by any person (i) other than a governmental unit or (ii) other than as a member of the general public. In addition, charges for use of the System will be based upon rates for usage only and not by contract with any nongovernmental person and the Improvements will only be used by persons on a basis as members of the general public.

(c) The City will take no action which would cause the Series 2003 Bond to be "federally guaranteed," specifically, (A) the payment of any portion of principal or interest with respect to the Series 2003 Bond will not be guaranteed (directly or indirectly) by the United States or any agency or instrumentality thereof, (B) none of the proceeds of the Series 2003 Bond will be used in making loans the payment of any portion of the principal or interest with respect to which are to be guaranteed by the United States or any agency or instrumentality thereof, and (C) none of the proceeds of the Series 2003 Bond (exclusive of proceeds invested for an initial temporary period until needed for the purpose for which the Series 2003 Bond were issued and proceeds deposited into the 2003 Construction Fund) will be invested (directly or indirectly) in federally insured deposits or accounts. Nothing in this paragraph (c) shall prohibit investments in bonds issued by the United States Treasury.

(d) The City 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 Series 2003 Bond is issued, statements on Form 8038G concerning the Series 2003 Bond.

(e) All net sale proceeds of the Series 2003 Bond deposited in the 2003 Construction Fund will be spent within three years of the date of issue of the Series 2003 Bond.

(f) The aggregate face amount of all tax-exempt bonds issued by the City (and all subordinate entities thereof) during the calendar year in which the Series 2003 Bond is issued is not reasonably expected to exceed \$5,000,000.

(g) The City hereby designates the Series 2003 Bond as a "qualified tax-exempt obligation" for purposes of section 265(b) of the Code.

(h) The amount of "qualified tax-exempt obligations" which will be issued by the City during the calendar year in which the Series 2003 Bond is issued is not reasonably anticipated to exceed \$10,000,000.

(i) The City will invest the moneys in the 2003 Bond Fund at a yield not in excess of the yield on the Series 2003 Bond.

**Section 30.** That by adoption of this Ordinance, the Town hereby declares its official intent pursuant to United States Treasury Regulation §1.150-2 to reimburse itself for original expenditures made in acquiring, constructing, and equipping the Improvements between the date that is 60 days prior to the date of this Ordinance and the date the Series 2003 Bond is issued, plus a de minimis amount and preliminary expenditures, with proceeds of the Series 2003 Bond in principal amount of not to exceed \$601,200.

**Section 31.** That anything herein to the contrary notwithstanding, all rights of any owner of the Series 2003 Bond to or with respect to any moneys or investments held in any fund or account hereunder shall terminate at the expiration of five years from the date of maturity of the Series 2003 Bond, whether by scheduled maturity or by call for redemption prior to maturity in accordance with the terms hereof.

**Section 32.** That the provisions of this Ordinance are hereby declared to be separable, and if any provision shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of the Ordinance.

**Section 33.** That all ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 34.** 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 Series 2003 Bond authorized by this Ordinance shall be issued and delivered.

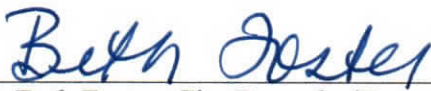
**Section 35.** That it is hereby ascertained and declared that the Improvements must be accomplished as soon as possible in order to alleviate immediate hazards to the health, safety, and welfare of the City, its inhabitants, and their property, and that the Improvements can be accomplished only by the issuance of the Series 2003 Bond. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health, and safety shall take effect and be enforced from and after its passage.

PASSED: October 14, 2003.

APPROVED:

  
Joe McKeel, Mayor

ATTEST:



Beth Foster, City Recorder/Treasurer

