

ORDINANCE NO. 04-2009

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER FACILITIES OF THE WATER AND SEWER SYSTEM OF THE CITY OF AUSTIN, ARKANSAS; AUTHORIZING THE ISSUANCE AND SALE OF A REVENUE BOND FOR THE PURPOSE OF FINANCING THE COST OF THE CONSTRUCTION; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the City Council of the City of Austin, Arkansas that:

Section 1. Certain terms used herein are defined in the bond form appearing in Section 5 of this Ordinance; other terms used herein shall have the following definitions:

"Accountant" means an independent certified public accountant not in the regular employ of the Issuer.

"Agreement" means the Memorandum of Agreement between the Issuer and the Commission, No. 00399-WSSW-D, as now or hereafter revised.

"Authorized Officers" means Bernadette Chamberlain, Mayor, and Monica Ring, City Recorder, or successors.

"Bond" means City of Austin, Arkansas Water and Sewer Revenue Bond authorized by this Ordinance in the Principal Amount.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the Arkansas Natural Resources Commission.

"Construction Fund" means a special fund created by this Ordinance and designated "2009 ANRC Water and Sewer Revenue Bond Construction Fund."

"Depreciation Fund" means a special fund created by this Ordinance and designated "Water and Sewer Depreciation Fund."

"Operation and Maintenance Fund" means a special fund which has been heretofore created and designated "Water and Sewer Operation and Maintenance Fund."

"Purchase Price" means \$300,000.

"Revenue Fund" means a special fund which has been heretofore created and designated "City of Austin Water and Sewer Revenue Fund."

Section 2. The Improvements shall be accomplished. Acquiring, constructing and equipping the Improvements as more specifically described in the report prepared by the Project Consultant are hereby approved, authorized and directed. The Authorized Officers are hereby authorized to take, or cause to be taken, all action necessary to accomplish the Improvements and to execute all required contracts and documents, including, but not limited to, the Agreement. The City Council hereby finds and declares that the period of usefulness of the System will be more than 40 years, which is longer than the term of the Bond.

Section 3. (a) Under the authority of the laws of the State, including particularly the Acts, the issuance of the Bond is hereby authorized and the Bond is ordered issued for the purpose of accomplishing the Improvements and paying necessary expenses incidental thereto and to the issuance of the Bond.

(b) The Bond shall be initially dated the date of original issuance and delivery, shall mature on the Maturity Date and shall bear interest from June 1, 2019 at the Interest Rate. Principal of and interest on the Bond shall be payable according to the Payment Schedule.

(c) The Bond shall be issuable as a fully registered Bond in one denomination and shall be numbered "R-1."

(d) The Bond, upon subsequent transfer, shall be exchanged for a new Bond dated as of the Payment Date to which interest has been paid, or if it is transferred prior to a date on which any interest has been paid, it shall be dated the Date of Issue. Principal and interest on the Bond shall be payable on the Payment Dates. Payment of each installment of principal and interest shall be made to the person in whose name the Bond is registered on the registration books of the Issuer maintained by the City Recorder, as bond registrar, at the close of business on the Record Date, irrespective of any transfer or exchange of any such Bond subsequent to such Record Date, and prior to such Payment Date, by check or draft mailed to such Registered Owner, at his address on such registration books. The City Recorder shall keep a payment record and make proper notations thereon of all payments of principal and interest.

(e) In case the Bond shall become mutilated or be destroyed or lost, the Issuer shall cause to be executed and delivered a new Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the Registered Owner paying the reasonable expenses and charges of the Issuer in connection therewith, and, in the case of the Bond being destroyed or lost, his filing with the City Recorder evidence satisfactory to him that the Bond was destroyed or lost, and of his ownership thereof, and furnishing the Issuer with indemnity satisfactory to it. Upon the issuance of a new Bond under this Section, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith.

(f) The Issuer shall cause to be maintained books for the registration and for the transfer of the Bond as provided herein and in the Bond. The City Recorder shall act as the bond registrar. The Bond is transferable only by the Registered Owner thereof or by his attorney duly authorized in writing. Upon such transfer the ownership of the Bond shall be registered to the subsequent Registered Owner, and a new fully registered Bond of the same maturity, for the same Principal Amount, less the amount of partial redemption, if any, will be issued in exchange therefor to the subsequent Registered Owner.

(g) No charge shall be made to the Registered Owner of the Bond for the privilege of transfer, but any Registered Owner of the Bond requesting any such transfer 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 transfer and any other expenses of the Issuer incurred in connection therewith, shall be paid by the Issuer.

(h) The person in whose name the Bond shall be registered shall be deemed and regarded as the absolute Registered Owner thereof for all purposes, and payment of or on account of the principal or interest on the 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 the Bond to the extent of the sum or sums so paid. The Issuer shall not be affected by any notice to the contrary.

(i) When the Payment Date or date fixed for redemption of the Bond 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 principal or interest need not be made on such date but may be made the next succeeding business day with the same force and effect as if made on the Payment Date or date fixed for redemption and no interest shall accrue for the period after the Payment Date or date fixed for redemption.

(j) The Bond shall be executed on behalf of the Issuer by the manual signatures of the Authorized Officers and the seal of the Issuer shall be affixed thereto.

Section 4. The sale of the Bond to the Commission for the Purchase Price pursuant to the Agreement is hereby authorized subject to the Interest Rate, Maturity Date and other terms and provisions set forth in detail herein. The Agreement, in substantially the form submitted to this meeting, is hereby approved. The Mayor is hereby authorized and directed to execute and deliver the Agreement on behalf of the Issuer and to take all action required on the part of the Issuer to fulfill its obligations under the Agreement. The Mayor is further authorized and directed to execute and deliver any necessary revision to the Agreement on behalf of the Issuer in order to modify any provisions thereof to conform to the terms of this Ordinance.

Section 5. The Bond shall be in substantially the following form and the Authorized Officers are hereby expressly authorized and directed to make all recitals on behalf of the Issuer contained therein:

(Form of Bond)

REGISTERED

REGISTERED

No. R-1

\$309,000

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF LONOKE
CITY OF AUSTIN
WATER AND SEWER REVENUE BOND

As used in this Bond the following terms shall have the following definitions:

"Act" or "Acts" whether one or more means Title 14, Chapter 234, Subchapter 2; Title 14, Chapter 235, Subchapter 2; Title 14, Chapter 164, Subchapter 4; and Title 19, Chapter 9, Subchapter 6, of the Arkansas Code of 1987 Annotated.

"Authorizing Ordinance" means Ordinance No. 03-209 of the Issuer duly adopted on April 6, 2009.

"Bond Fund" means a special fund which has been created by the Authorizing Ordinance and is designated "2009 ANRC Water and Sewer Revenue Bond Fund."

"Dated Date" means the Date of Issue or, if this Bond is exchanged and registered to a subsequent Registered Owner, the Payment Date immediately prior to such exchange or registration.

"Date of Issue" means the date this Bond is issued and delivered to the original purchaser, which is _____, 200_.

"Improvements" means extensions, betterments and improvements to the water facilities of the System.

"Interest Rate" means 5.00%.

"Issuer" means City of Austin, Arkansas.

"Maturity Date" means June 1, 2039.

"1998 Bond" means the Issuer's Sewer Revenue Bond, Series 1997 dated March 6, 1998.

"Payment Date" means June 1, 2020 and every June 1 thereafter.

"Payment Schedule" means equal annual installments of principal and interest in the amount of \$24,795 on each Payment Date to and including June 1, 2038, with \$24,796 of principal and interest due on the Maturity Date.

"Principal Amount" means \$309,000.

"Project Consultant" means Miller Newell Engineers, Inc.

"Record Date" means the 15th day of the month (whether or not a business day) next preceding each Payment Date.

"Senior Issues" means the 1998 Bond, the 2006 Sewer Bond and the 2006 Water Bond.

"State" means the State of Arkansas.

"System" means the water and sewer system of the Issuer.

"2006 Sewer Bond" means the Issuer's Water and Sewer Revenue Bond dated November 9, 2006.

"2006 Water Bond" means the Issuer's \$550,000 Water and Sewer Revenue Bond not yet issued, but authorized pursuant to Ordinance No. 03-2006, adopted May 22, 2006, as amended by Ordinance No. 08-2006, adopted October 9, 2006.

"2009 RD Water Bond" means the Issuer's \$550,000 Water and Sewer Revenue Bond not yet issued, but authorized pursuant to Ordinance No. 04-2009, adopted April 16, 2009.

KNOW ALL MEN BY THESE PRESENTS:

That the Issuer, for value received, hereby promises to pay, by check or draft, to the order of Arkansas Natural Resources Commission or registered assigns (collectively, the "Registered Owner"), the Principal Amount with interest thereon, at the Interest Rate per annum shown above, in such coin or currency from June 1, 2019, payable as provided in the Payment Schedule until payment in full of such Principal Amount 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 allowed by law) at the rate borne by this Bond. Payments shall be first applied to accrued interest and the balance thereof shall be applied to principal. Payment shall be made to the person in whose name this Bond is registered on the registration books of the Issuer maintained by the City Recorder, as bond registrar, at the close of business on the Record Date, irrespective of any transfer or exchange of this Bond, subsequent to the Record Date and prior to such Payment Date.

This Bond is issued for the purpose of financing and paying a portion of the costs of the construction of the Improvements, and paying necessary expenses incidental thereto and to the issuance of this Bond.

This Bond is issued pursuant to and in full compliance with provisions of the Constitution and laws of the State, including particularly the Acts, and pursuant to the Authorizing Ordinance, and does not constitute an indebtedness of the Issuer within any constitutional or statutory limitation.

This Bond is not a general obligation of the Issuer, but is a special obligation of the Issuer payable solely from receipts received from the operation of the System (the "Revenues"). This Bond is secured by a statutory mortgage lien upon the water facilities of the System and a pledge by the Issuer of the Revenues pursuant to the provisions of the Acts in favor of the Registered Owner of this Bond. In this regard, the pledge of the portion of Revenues derived from the operation of the sewer facilities of the System is (a) subordinate to the pledge in favor of the Senior Issues and (b) on a parity with the pledge in favor of the 2009 RD Water Bond. The pledge of the portion of Revenues derived from the operation of the water facilities of the System is (a) subordinate to the pledge in favor of the 2006 Sewer Bond and the 2006 Water Bond and (b) on a parity with the pledge in favor of the 2009 RD Water Bond.

An amount of Revenues sufficient to pay the principal of and interest on this Bond has been duly pledged and set aside as a special fund for that purpose, and will be deposited from time to time into the Bond Fund. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which this Bond is issued, of the terms and conditions for the issuance of additional bonds, of the nature and extent of the security for this Bond, and of the rights and obligations of the Issuer and the Registered Owner.

This Bond is subject to mandatory redemption at par (i) from bond proceeds not used to pay the cost of the Improvements on the first Payment Date following the date of the Project Consultant's completion certificate and (ii) in the event that the 2006 Water Bond or the 2009 RD Water Bond is redeemed in full, on the first Payment Date following the date of redemption. This Bond is also subject to redemption, in whole or in part, at the option of the Issuer, at any time on and after December 1, 2009, without penalty. Notice of redemption identifying portions of this Bond to be redeemed shall be given by the City Recorder, not less than 15 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to the Registered Owner. In the event of partial redemption, prepayments shall be applied in inverse order of maturity, the length of the Payment Schedule shall be reduced accordingly and the amount due on each Payment Date shall not be reduced.

The Issuer 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 this Bond as the same become due and payable, to maintain any required debt service reserves and to make the required deposit for the depreciation of the System.

This Bond is transferable by the Registered Owner hereof only as provided in the Authorizing Ordinance. The Issuer may deem and treat the Registered Owner as the absolute owner hereof for the purpose of receiving payment of principal and interest due hereon and for all other purposes, and the Issuer shall not be affected by any notice to the contrary.

This Bond is issued with the intent that the laws of the State shall govern its construction.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed under the Constitution and laws of the State, 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; that the indebtedness represented by this Bond does not exceed any constitutional or statutory limitation; and that the Revenues have been pledged in accordance with the Acts sufficient to pay this Bond and interest hereon until this Bond and interest hereon have been fully paid and discharged.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed by the undersigned Authorized Officers and its corporate seal to be affixed hereto, all as of the Dated Date shown above.

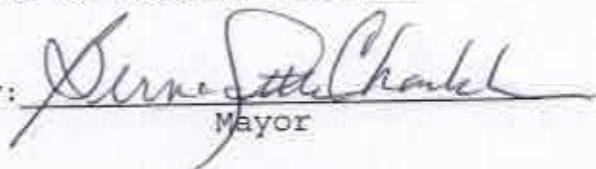
CITY OF AUSTIN, ARKANSAS

ATTEST



City Recorder

By:



Mayor

(SEAL)

(A Form of Assignment shall be attached to the Bond.)

Section 6. Principal of and interest on the Bond shall be payable according to the Payment Schedule.

Section 7. (a) The rates charged for services of the System heretofore fixed by ordinances of the City and the conditions, rights and obligations pertaining thereto, as set out in those ordinances, are ratified, confirmed and continued.

(b) The Issuer hereby expressly pledges all of the receipts received from the operation of the System (the "Revenues") to secure the payment of the principal of and interest on the Bond when due at maturity or at redemption prior to maturity and as security for the performance of all other obligations of the Issuer hereunder; and the Bond is hereby secured by the lien of such pledge; and the Revenues shall be used for no other purpose than to pay the principal of and interest on the Bond, except as otherwise specifically provided herein. The Bond and interest thereon shall not constitute an indebtedness of the Issuer within any constitutional or statutory limitation. The Bond is not a general obligation of the Issuer but is a special obligation of the Issuer payable solely from Revenues. Nothing herein shall be construed as requiring the Issuer to use any funds or revenues from any sources other than the Revenues for the payment of the Bond, but nothing herein shall be construed as prohibiting the Issuer from doing so. The Bond is hereby further secured by a statutory mortgage lien upon the water facilities of the System which exists pursuant to the provisions of the Acts and applicable decisions of the Supreme Court of the State of Arkansas, including City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2d 12 (1946), in favor of the Registered Owner of the Bond, and the water facilities of the System are hereby mortgaged as security for the payment of the principal and interest on the Bond and as security for the performance of all other obligations of the Issuer hereunder.

(c) The Issuer, and the officers and employees of the Issuer, shall execute, perform and carry out the terms of this pledge in strict conformity with the provisions of this Ordinance.

(d) The pledge of the portion of Revenues derived from the operation of the sewer facilities of the System is (i) subordinate to the pledge in favor of the Senior Issues and (ii) on a parity with the pledge in favor of the 2009 RD Water Bond. The Pledge of the portion of Revenues derived from the operation of the water facilities of the System is (i) subordinate to the pledge in favor of the 2006 Sewer Bond and the 2006 Water Bond and (ii) on a parity with the pledge in favor of the 2009 RD Water Bond.

Section 8. All Revenues shall be paid as and when received into the Revenue Fund. All moneys at any time in the Revenue Fund shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on the Bond, the Senior Issues, the 2009 RD Water Bond and bonds subsequently issued secured by Revenues (collectively, "System Bonds"), to the maintenance of any required debt service reserves at the required levels, to the maintenance of the Depreciation Fund in the required amount and otherwise as described herein.

Section 9. (a) The Bond Fund is hereby established and created as a special fund of the Issuer. The Bond Fund shall be held by a bank or banks selected by the Issuer which are members of the Federal Deposit Insurance Corporation ("FDIC"). Moneys in the Bond Fund shall be used in the following order of priority as and when necessary solely for the purpose of paying principal and interest on the Bond.

(b) After making the required monthly deposit into the Operation and Maintenance Fund to pay the reasonable and necessary expenses of operation, repair and maintenance of the System for such month and after making the monthly transfers with respect to the Senior Issues, there shall be paid from the Revenue Fund into the Bond Fund, contemporaneously with required payments into the bond fund for the 2009 RD Water Bond, with such payments into the Bond Fund beginning on the first business day of June 2019, and continuing on or before the first business day of each month thereafter until the Bond with interest thereon have been paid in full, or provision made for such payment, a sum equal to 1/12 of the installment of principal and interest coming due during the then next twelve months on the Bond. Credit shall be given on the monthly payments into the Bond Fund for any amounts of investment earnings thereon.

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

(d) When the moneys held in the Bond Fund shall be and remain sufficient to pay the outstanding principal of and interest on the Bond, there shall be no obligation to make further payments into the Bond Fund.

(e) If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest

payments during the succeeding twelve months on the Bond, such surplus may be applied to the payment of the principal of the Bond to the extent that it may be called for redemption prior to maturity. All moneys deposited in the Bond Fund shall be expended within a thirteen month period beginning on the date of deposit, and any amount received from investment of money held in the Bond Fund shall be expended within one year from the date of receipt and in any event all money in the Bond Fund in excess of a carryover amount not to exceed the greater of (A) one year's earnings on the Bond Fund, or (B) 1/12 of the annual debt service on the Bond, shall be depleted at least once a year as provided in this Section or by transfer to the Revenue Fund.

(f) In addition to other security pledged herein, the Bond shall be specifically secured by a pledge of all moneys and Revenues required to be placed into the Bond Fund. The obligation to make payments into the Bond Fund and the obligation to make payments into the bond fund for the 2009 RD Water Bond (the "Parity Bond Fund") shall be on a parity of lien, pledge and security. If the available moneys in the Revenue Fund are insufficient to pay in full the required payments for any month into the Bond Fund and the Parity Bond Fund the available moneys shall be distributed between the Bond Fund and the Parity Bond Fund in proportion to the required payments. The pledge in favor of the Bond is hereby irrevocably made according to the terms hereof, and the Issuer and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions hereof.

Section 10. After making the required payment into the Operation and Maintenance Fund, after making the monthly transfers with respect to the Senior Issues and after making the required payment into the Bond Fund, there shall be paid from the Revenue Fund into the Depreciation Fund, on the first business day of each month, 3% of the gross Revenues of the System for the preceding month. The moneys in the Depreciation Fund shall be used for the purpose of paying the cost of major maintenance or repairs, renewals or replacements of any part of the System.

Section 11. No money held for credit of the Revenue Fund shall be used to make any expenditures other than expenditures for the System.

Section 12. (a) When the Bond has been executed and sealed by the Authorized Officers, it shall be delivered to the Commission upon payment of the Purchase Price which shall be deposited in the Construction Fund to be established with a bank or bank selected by the Issuer which are members of the FDIC.

(b) The moneys in the Construction Fund shall be used for accomplishing the Improvements, paying expenses incidental thereto and paying expenses of issuing the Bond, with any unexpended balance to be deposited in the Bond Fund. Except as set forth in subsection (a), disbursements shall be made from the Construction Fund on the basis of checks which shall contain at least the following information: the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; and the purpose by general classification of the payment. Each check must be approved by the Commission and signed by two persons designated by the Issuer. The City Treasurer shall keep records of all payments made from the Construction Fund.

(c) 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 be evidenced by a certificate signed by an Authorized Officer and an agent of the Project Consultant which certificate shall state, among other things, the date of the completion and that all obligations payable from the Construction Fund have been discharged (the "Completion Certificate"). A copy of the Completion Certificate shall be filed with the depository of the Construction Fund and upon receipt thereof such depository shall transfer any remaining balance to the Issuer for deposit into the Bond Fund.

Section 13. (a) Moneys held for the credit of the Bond Fund and the Construction Fund shall be invested and reinvested in Government Securities (which for purposes hereof are hereby defined to mean direct or fully guaranteed obligations of the United States of America), in certificates of deposit of banks which are insured by the FDIC, or, if in excess of insurance coverage, are collateralized by Government Securities or other securities authorized by State law to secure public funds (collectively, "Collateral Securities"), or in other investments as may, from time to time, be permitted by law and approved by the Registered Owner, which shall mature, or which investments shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

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

(c) Moneys so invested in Government Securities or certificates of deposit of banks to the extent insured by FDIC need not be secured by the depository bank or banks. Except as set forth in the preceding sentence, all deposits of Revenues shall be collateralized by the pledge of Collateral Securities in such a manner as to be perfected against the claims of innocent creditors under the Financial Institution Reform, Recovery and Enforcement Act of 1989 and the Arkansas Uniform Commercial Code.

Section 14. (a) The Bond shall be subject to redemption prior to maturity in accordance with the terms set out in the bond form herein. The Issuer hereby covenants to use moneys in the Construction Fund not necessary to pay the cost of the Improvements to redeem the Bond at par on the first Payment Date following the date of the Completion Certificate.

(b) The Bond shall be deemed paid when (1) there has been deposited with the Registered Owner an amount sufficient to pay the principal or redemption price of and interest on the Bond to the Maturity Date or redemption or (2) there has been deposited with the Registered Owner Government Securities that mature according to their terms and are non-callable or redeemable at the option of the holder thereof on or prior to the Maturity Date or redemption of the Bond and the principal or redemption price of and interest on which will provide an amount sufficient to pay in full the principal or redemption price of and interest on the Bond when due; provided that such deposit will not affect the tax exempt status of the interest on the Bond or cause the Bond to be classified as an arbitrage bond within the meaning of Section 148 of the Code, and provided further, that if the Bond is to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given as provided in the Bond Form. If the Bond is called for redemption and funds are duly provided in accordance with this Ordinance prior to the date fixed for redemption, the Bond will cease to bear interest on such redemption date. Prepayment of less than all outstanding principal shall be applied in inverse order of maturity.

(c) In determining the sufficiency of the deposit there shall be considered the principal amount of such Government Securities and interest to be earned thereon until the maturity of such Government Securities.

(d) The Bond paid either at or before maturity shall be cancelled and shall not be reissued.

Section 15. So long as the Bond is outstanding, it is hereby covenanted and agreed by the Issuer with the Registered Owner that:

(a) The Issuer covenants and agrees that the rates charged for services of the System hereby fixed and established are not less than the minimum necessary to produce and will hereafter produce, and shall be maintained in amounts necessary to produce, total Revenues at all times at least sufficient to: pay operation and maintenance expenses of the System; pay the principal of and interest on outstanding System Bonds as the same become due; maintain any required debt service reserves in the required amounts; and make the required deposits into the Depreciation Fund. The Issuer further covenants that the rates shall never be reduced while the Bond is outstanding unless (1) there is obtained from an Accountant a certificate that the net revenues of the System that will be derived from the proposed new rates, based upon the previous twelve months of consumption, will be sufficient in amount for making the required deposit into the Depreciation Fund, and for maintenance of any required debt service reserves in the required amounts, and leave a balance equal to at least 110% of the average annual principal and interest requirements on all outstanding System Bonds and (2) the Issuer is not in default hereunder. The Issuer further covenants and agrees that the rates shall be maintained in such manner as will provide net revenues at least sufficient to provide the required deposits into the Depreciation Fund, and to leave a balance amount equal to not less than 110% of the average annual principal and interest requirements for all System Bonds outstanding. The term "net revenues" as used in this Section, means all Revenues, less the expenses of operation and maintenance of the System, including all expense items properly attributable to the operation and maintenance of the System determined in accordance with generally accepted accounting principles applicable to government owned facilities similar to the System, excluding depreciation and debt service expenses.

(b) The Issuer covenants and agrees that it will diligently collect the Revenues and continuously operate the System as a revenue producing undertaking.

(c) The Issuer covenants that so long as the Bond is outstanding, that it will not mortgage, pledge or otherwise encumber the System, or any part thereof or any Revenues, except as herein provided, and will not sell, lease or otherwise dispose of any substantial portion of the same. Nothing herein shall be construed to prohibit the Issuer from disposing of worn out or obsolete System properties or from disposing of properties not being used and not useful in the operation of the System, provided that all receipts derived from the disposition of such properties shall be deposited in the Revenue Fund.

(d) The Issuer covenants and agrees that it will duly observe and comply with all valid requirements of any governmental authority relative to the System, that it will not create or suffer to be created any lien or charge upon the System or any part thereof or upon the Revenues, except in accordance with the provision hereof, and that, from such Revenues, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within 60 days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System or any part thereof or upon the Revenues therefrom; provided, however that nothing in this Section contained shall require the Issuer to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

(e) To the extent comparable protection is not otherwise provided to the satisfaction of the Registered Owner, the Issuer covenants and agrees that it will keep the System facilities insured against loss or damage, and maintain public liability and property damage insurance against claims for bodily injury or death and damage to property occurring upon, in or about the System facilities, in each case in an amount and against such risks as are usually insured against in connection with similar facilities and undertakings as the System. The Issuer further covenants, to the extent comparable protection is not otherwise provided to the satisfaction of the Registered Owner, that it will maintain adequate fidelity insurance or bonds on all officers or employees responsible for handling funds of the System. All insurance required by this subsection shall be effected with reputable insurance companies selected by the Issuer, which usually insure risks similar in nature and monetary exposure. Copies of certificates of the insurance provided for herein, or summaries thereof, shall be placed on file with the Registered Owner.

(f) The 2009 RD Water Bond may be issued on a parity of security with the Bond. Except as provided in the previous sentence, the Issuer covenants and agrees that it will not issue any bond, or incur any obligation, either (i) secured by a prior lien on or pledge of the Revenues or (ii) on a parity of security with the Bond, except the Issuer reserves the right to issue additional bonds to finance or pay the cost of constructing any future extensions, betterments or improvements to the System or to refund System Bonds, but the Issuer shall not authorize or issue any such additional bonds having a priority on or ranking on a parity with the Bond (other than the 2009 RD Water Bond) unless and until there has been procured and filed with the Issuer and the

Registered Owner a statement by an Accountant stating, based upon necessary investigation, that the net revenues of the System for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 110% of the maximum annual principal and interest requirements on all the then outstanding System Bonds and the additional bonds then proposed to be issued. For the purposes of the computation required by this Section, if, prior to the issuance of the additional bonds and subsequent to the first day of such preceding fiscal year, the Issuer shall have increased its rates or charges imposed for services of the System, there may be added to the net revenues of such fiscal year the additional net revenues which would have been received from the operation of the System during such fiscal year had such increase been in effect throughout such fiscal year, as reflected by a certificate of a duly qualified consulting engineer not in the regular employ of the Issuer.

(g) The Issuer covenants and agrees that it will faithfully and punctually perform all duties with reference to the Revenues and the Bond, and apply the Revenues as required herein and by the Constitution and laws of the State.

(h) The Issuer covenants and agrees that it will forthwith proceed to construct the Improvements for which the Bond shall be issued in accordance with plans and specifications which shall have been approved by the Project Consultant, and in conformity with law and all requirements of all governmental authorities having jurisdiction thereover, and that it will expeditiously complete such construction.

Section 16. The Issuer shall cause proper books of accounts and records to be kept (separate from all other accounts and records) 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 Registered Owner at reasonable times and under reasonable circumstances. The Issuer agrees to have the System records audited by an Accountant at least once each year, and a copy of the audit shall be delivered the Registered Owner no later than 120 days after the end of the year. In the event the Issuer fails or refuses to make the report, the Registered Owner may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 17. All Revenues received by the City Treasurer or any agent of the Issuer shall be deposited in such depository or depositories for the Issuer as may be lawfully designated by Issuer from time to time; subject, however, to the giving of security as now or as hereafter may be required by law, and provided that such

depositories are members of FDIC. The officer having custody of the Issuer's other funds shall be custodian of the Revenues. Payments from the respective funds shall be made by checks or vouchers, signed by the person or persons designated by the City Council, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

Section 18. (a) If there be any default in the payment of the principal of and interest on the Bond, or if the Issuer defaults in the performance of any covenant contained herein, the Registered Owner may, by proper suit compel the performance of the duties of the officials of the Issuer hereunder and under the Constitution and laws of the State, and may take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State, including any action for the appointment of a receiver to administer the System on behalf of the Issuer and the Registered Owner 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 of the System and to pay the Bond and interest outstanding and to apply the Revenues in conformity herewith and with the laws of the State. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the Issuer.

(b) No remedy herein conferred upon or reserved to the Registered Owner is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law or by the Constitution of the State.

(c) No delay or omission of the Registered Owner 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 hereby to the Registered Owner may be exercised from time to time and as often as may be deemed expedient.

(d) Any costs of enforcement of the obligations of the Issuer hereunder, including reasonable attorney's fees, shall be paid by the Issuer and shall constitute obligations of the Issuer hereunder.

Section 19. The terms hereof shall constitute a contract between the Issuer and the Registered Owner and no variation or change in the undertaking herein set forth shall be made while the Bond is outstanding without the written consent of the Registered Owner, and the Registered Owner may at any time for and on his own

behalf enforce the obligations of the Issuer by a proper suit for that purpose.

Section 20. (a) The Issuer covenants with the Registered Owner, who otherwise might qualify by law to treat interest on the Bond as tax-exempt, 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 Bond to be subject to federal income taxation pursuant to existing laws at the time of issuance; and it shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest payable on the Bond shall be exempt from federal income taxation pursuant to existing laws at the time of issuance. Without limiting the generality of the foregoing, the Issuer covenants that the proceeds of the sale of the Bond will not be used directly or indirectly in such manner as to cause the Bond to be treated as an "arbitrage bond" within the meaning of Section 148 of the Code.

(b) The Issuer represents and covenants that it has not used or permitted the use of, and covenants that it will not use or permit the use of the Improvements or the proceeds of the Bond, in such a manner as to cause the Bond to be a "private activity bond" within the meaning of Section 141 of the Code. In this regard, the Issuer covenants that (i) it will not use (directly or indirectly) the proceeds of the Bond to make or finance loans to any person, (ii) that while the Bond is outstanding the water facilities of the System will only be used by State or local governmental units and by persons on a basis as members of the general public and (iii) that charges for use of the System while the Bond is outstanding will be based upon rates for usage only.

The Issuer covenants that it will not enter into wholesale water contracts for the sale of water in the future with nongovernmental entities, if such contracts would cause the Bond to become a "private activity bond" within the meaning of Section 141 of the Code.

(c) The Issuer represents and covenants that it will take no action which would cause the Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section prohibits investments in bonds issued by the United States Treasury.

(d) The Issuer certifies that (i) it is a governmental unit of the State, (ii) 95% of the net proceeds of the sale of the Bond will be used for governmental activities of the Issuer within its jurisdiction and (iii) it and its subordinate entities, if any, will not have issued and will not issue tax-exempt obligations (other than private activity bonds) having an aggregate face amount in excess of \$5,000,000 during the year in which the Bond is issued.

(e) The Issuer agrees to make all filings with the Internal Revenue Service (specifically including Form 8038G) that are required from time to time to assure that the Bond is and will remain an obligation on which the interest is excludable from gross income of the holder under Section 103(a) of the Code.

(f) This Ordinance shall be considered an "official intent" within the meaning of United States Treasury Regulation No. 1.150-2.

Section 21. The provisions hereof 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 hereof.

Section 22. All actions, ordinances and resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED THIS DATE: April 6, 2009.

APPROVED:

By: Bernard Bell Chahl
Mayor

ATTEST:

Monica King
City Recorder

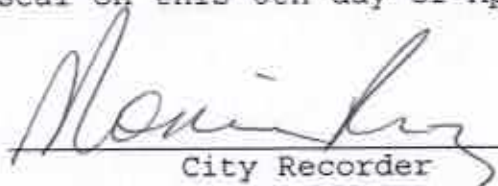
(SEAL)

CERTIFICATE

The undersigned, City Recorder of the City of Austin, Arkansas hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 04-2009, adopted at a special session of the City Council of the City of Austin, Arkansas, held at the regular meeting place in said City at 7:00 o'clock p.m., on the 6th day of April, 2009, and that the Ordinance is of record in the Ordinance Record Book now in my possession.

GIVEN under my hand and seal on this 6th day of April, 2009.




City Recorder