**ORDINANCE NO. 06-81**

AN ORDIANCE AUTHORIZING THE CONSTRUCTION OF

A NEW SEWER SYSTEM FOR THE TOWNOF AUSTIN, ARKANSAS

TO BE OPERATED WITH THE EXISTING WATER SYSTEM OF THE

TOWN AS A SINGLE INTEGRATED UTILITY SYSTEM; AUTHORIZING THE

ISSUANCE OF WATER AND SEWER REVENUE BONDS FOR THE PURPOSE

OF FINANCING A PORTION OF THE COST OF THE CONSTRUCTION;

PROVIDING FOR THE PAYMENT OF PRESRIBING OTHER MATTERS

RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Austin, Arkansas (the “Town”), owns and operates water facilities and has determined that a Sewer System should be constructed (the “construction”) in order that the Town and its inhabitants may have adequate and proper water and sewer facilities, with the existing water and proposed facilities to be operated as one interrelated municipal undertaking (the “System”) ; and

WHEREAS, the Town Council has had prepared by a duly qualified consulting engineer a preliminary report and estimates of costs of the proposed construction, which have been examined and approved by the Town Council and a copy filed in the office of the Recorder where it may be inspected by any interested person; and

WHEREAS, the total estimated cost of the construction and of authorizing and issuing bonds and paying interest during construction is $945,000; and

WHEREAS, the Town does not have available funds to undertake the construction and pay the cost of authorizing and issuing bonds and paying interest during construction by can obtain the same by the issuance of Water and Sewer Revenue Bonds in the principal amount of $100,800, with the balance of the costs to be obtained as grants from agencies of the United States of America; and

WHEREAS, the Town has outstanding an issue of Waterworks Improvement Revenue Bonds, dated September 20, 1967 (the “1967 Bonds”), authorized by Ordinance No. 67-500, adopted and approved August 8, 1967 (the “1967 Ordinance”); and

WHEREAS, the Town has entered into a Loan Agreement with the United States of America, Farmers Home Administration, whereby the United States of America has committed to purchase $100,800 in principal amount of Water and Sewer Revenue Bonds, at an interest rate of 5% per annum; and

WHEREAS, the Town is authorized, under the provisions of Act No. 131 of the Acts of Arkansas of 1933, as amended, and Act No. 132 of the Acts of Arkansas of 1933, as amended, to accept the offer of the United States of America, Farmers Home Administration (the “Government”);

WHEREAS, the Town is authorized, under the provisions of Act No. 131 of the Acts of Arkansas of 1933, as amended, and Act No. 132 of Acts of Arkansas of 1933, as amended, to accept the offer of the United States of America, Farmers Home Administration (the “Government”);

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Austin, Arkansas:

SECTION 1. That the construction be accomplished. The Mayor and Town Recorder are hereby authorized to take, or cause to be taken, all action necessary to accomplish the construction and to execute all required contracts and documents.

SECTION 2. That the offer of the United States of America, Farmers Home Administration, of par for $100,800 in principal amount of bonds bearing interest at the rate of 5% per annum is hereby accepted, and the bonds are hereby sold to the Government.

SECTION 3. That the Town Council hereby finds and declares that the period of usefulness of the System after completion of the construction will be more that forty (40) years.

SECTION 4. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Act No. 131 of the Acts of Arkansas of 1933, as amended, Act No. 132 of the Acts of Arkansas of 1933, as amended, Act No. 132 of the Acts of Arkansas of 1933, as amended, and applicable decisions of the Supreme Court of the State of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S. W. 2d 12 (1946), Town of Austin, Arkansas, Water and Sewer Revenue Bonds are hereby authorized and ordered issued in the principal amount of $100,800, the proceeds of the sale of which are necessary to finance the cost to the Town of the construction, including necessary expenses incidental thereto and to pay the expenses of issuing the bonds. References in this Ordinance to unqualified word “bonds” shall, unless the context requires otherwise, be deemed reference to the permanent bonds authorized by this Section 4 and not to the temporary bonds authorized by Section 6 (b). The bonds shall be dated as of the date of their delivery and shall bear interest at the rate of five percent (5%) per annum. The principal of and interest on the bonds shall be payable in annual amortized installments of principal and interest commencing three years from the date of the bonds and continuing annually thereafter on the same month and day; interest only shall be payable on the first and second anniversary date of the bonds; provided however, that if the bonds are dated on the 29th, 30th, or 31st day of any month the annual payments of interest and amortized installments shall be made on the 28th day of the month in which the annual payments are due. The amortized installments of principal and interest shall continue until the principal of the bonds, with interest, is fully paid, except that final payment of the bonds shall be due and payable forty (40) years from the date of the bonds, subject to prepayment prior to maturity as provided in the face of the bonds.

The bonds will be issued in the form of a single typewritten bond, registered as to both principal and interest, payable to the registered owner, or assigns, as set forth hereinafter in the permanent bond form, and shall be numbered R-1. (Even though a single bond is being issued, reference herein will be to “bonds.”)

Payment of principal and interest shall be by check or draft mailed to the registered owner thereof, without presentation or surrender of the bonds (except upon final payment) and such payments shall discharge the obligation of the Town to the extent thereof. The Town 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, on the respective dates or payment, is legal tender for the payment of public and private debts. When the principal of and interest on any bond has been fully paid, the bond shall be canceled and delivered to the Town Recorder.

SECTION 5. The bonds shall be executed on behalf of the Town by the Mayor and Town Recorder and shall have impressed thereon the seal of the Town. The bonds are not general obligations of the Town but are special obligation, the principal of and interest on which are secured by a pledge of and are payable from revenues derived from the System. The pledge of System revenues is subordinate to the pledge in favor of the 1967 Bonds. The bonds and interest thereon shall not constitute an indebtedness of the Town within any constitutional or statutory limitation.

SECTION 6. (a) That the bonds shall be in substantially the following form and the Mayor and Town Recorder are hereby authorized and directed to make all the recitals contained therein:

(Form of single registered bond)

(to be typewritten)

UNITED STATES OF AMERICA

STATE OF ARKANSAS

COUNTY OF LONOKE

TOWN OF AUSTIN

5% WATER AND SEWER REVENUE BOND

No. R-1 $100,800

KNOW ALL MEN BY THESE PRESENTS:

That the Town of Austin, Lonoke County, Arkansas, (the “Town”), for value received, hereby acknowledges itself to owe and promises to pay to the registered owner, or assigns, solely from the special fund provided as hereinafter set forth, the principal sum of

ONE HUNDRED THOUSAND EIGHT HUNDRED DOLLARS

with interest on the unpaid balance of the aggregate principal sum at the rate of five percent (5%) per annum from the date hereof. The principal and interest shall be payable in such coin or currency of the United State of America as at the time of payment shall be legal tender for the payment of debts due the United States of America and shall be payable in the following installments, on or before the following dates of the date of this bond; and $5,977 three years from the date of this bond and annually thereafter on the same month and day (except that if this bond is dated the 29th, 30th, or 31st of any month, the annual payment shall be due on the 28th date of the month in which the annual payments are due) until the principal and interest are fully paid, except that the final payment of the entire indebtedness, if not sooner paid, shall be due and payable forty (40) years from the date of this bond.

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the registered owner at his address shown on the bond registration book of the Town, and such payments shall fully discharge obligation of the Town, and such payments shall fully discharge obligation of the Town to the extent of the payments so made.

This bond is issued for the purpose of financing a portion of the costs of constructing a new Sewer System (the “construction”), to be operated with the existing Water System of the Town as one interrelated municipal undertaking (the “System”), and costs of authorizing and issuing the bond and paying interest during construction, with the balance of the costs to be obtained from agencies of the United States of America, and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Act No. 131 of the Acts of Arkansas of 1993, as amended, and applicable decisions of the Supreme Court of the State of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), and pursuant to Ordinance No. 6-81 of the Town, duly adopted and approved on the 2 day of November, 1981 (the “Authorizing Ordinance”).

Prepayments of principal installments, or any portion thereof, may be made from funds from any source at any time at the option of the Town in inverse chronological order of maturity at a price of the principal amount thereof plus accrued interest. Such prepayments shall not affect the obligations of the Town to pay the remaining installments as scheduled herein.

The bond does not constitute an indebtedness of the Town within any constitutional or statutory limitation or provision, and the taxing power of the town is not pledged to the payment of the principal of or interest on the bond. This bond is a special obligation payable solely from revenues derived from the operation of the System. In this regard, the pledge of System revenues is subordinate to the pledge to an issue of Waterworks Improvement Revenue Bonds, dated September 20, 1967 (the “1967 Bonds”) so long as the 1967 Bonds are outstanding. A sufficient amount of System revenue has been duly set aside and pledged as a special fund for that purpose, identified as the “Water and Sewer Revenue Bond Fund,” created by the Authorizing Ordinance. The Town has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all times to at least provide for the payment of the reasonable expenses of operation and maintenance of the System, provide for the payment of the principal of and interest on all the outstanding bonds to which System revenues are pledged as the same become due, establish and maintain debt service reserves and to provide a depreciation fund, all as set forth in the Authorizing Ordinance.

This bond may be assigned, and upon assignment the assignor shall promptly notify the Town Recorder by registered mail, and the assignee shall surrender this bond to the Town Recorder for transfer on the registration records. 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 Town Recorder), prior to such surrender for transfer.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the constitution and statutes of the State of Arkansas to exist, happen and be performed precedent to and in the issuance of this bond, do exist, have happened and have been performed in regular and due form and manner as required by law; that the bond does not exceed any constitutional or statutory limitation of indebtedness, and that provision has been made for the payment of the principal of and interest on this bond, as provided in the Authorizing Ordinance.

IN WITNESS WHEREOF, the Town of Austin, Arkansas, has caused this bond to be executed in its name by its Mayor and Town Recorder, thereunto duly authorized, with the manual signatures of the Mayor and Town Recorder, and its corporate seal to be affixed, all as of the 2nd day of November, 1981.

TOWN OF AUSTIN, ARKANSAS

By:

E. W. Norman Jr.

Mayor

ATTEST:

Jean Boyd

Town Recorder

(SEAL)

REGISTRATION CERTIFICATE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of

Date of Registration : Name of Registered Owner : Town Recorder

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SECTION 6. (b) Pending the preparation an delivery of the permanent and definitive bonds hereinabove authorized, temporary bonds in the aggregate principal amount of not to exceed $100,800 may be issued for the purpose of providing construction funds immediately and in anticipation of the issuance of such permanent and definitive bonds. The temporary bonds shall be in such denominations as the Mayor shall determine, be numbered form 1 upwards, be dated the day of delivery, bear interest at the rate of 10% percent per annum, and be payable within two (2) years from their date. Upon delivery of the permanent and definitive bonds, the temporary bonds to the extent then outstanding, with accrued interest, shall be exchanged for or paid from the proceeds of, the permanent and definitive bonds and shall be canceled. The temporary bonds shall be typewritten and in substantially the following form:

UNITED STATES OF AMERICA

STATE OF ARKANSAS

COUNTY OF LONOKE

TOWN OF AUSTIN

TEMPORARY WATER AND SEWER REVENUE BOND

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

KNOW ALL MEN BY THESE PRESENTS:

The Town of Austin, Lonoke County, Arkansas hereby acknowledges itself indebted and promises to pay to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at its office in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Arkansas, or assigns, the principal sum of

ONE HUNDRED THOUSAND EIGHT HUNDRED DOLLARS

(or the total principal amount outstanding as reflected

By the Record of Payment of Advances attached hereto)

On \_\_\_\_\_\_\_\_\_\_\_\_, 19\_\_\_, plus interest thereon from the date hereof at the rate of \_\_\_\_\_\_\_\_ percent per annum, payable one year from date and at maturity.

This bond is one of an issue of temporary bonds in an aggregate amount not to exceed $100,800 issued for the purpose of providing construction funds in anticipation of this issuance of permanent and definitive bonds for constructing a new Sewer System to be operated with the existing Water System of the Town as one interrelated municipal undertaking (the “System”), in accordance with the bond ordinance of the Town adopted on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The temporary bonds are not general obligations of the Town but are special obligations payable solely from the revenues of the System and from a pledge of the proceeds of the permanent and definitive bonds. In this regard, the pledge of System revenues is subordinate to the pledge of System Revenues to an issue of Waterworks Improvement Revenue Bonds, dated September 20, 1967 (the “1967 Bonds”). The Town has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all time to at least provide for the payment of the reasonable expenses of operation and maintenance of the System, provide for the payment of the principal of and interest on all the outstanding permanent bonds to which System revenues are pledged as the same become due, to establish and maintain debt service reserves and to provide a depreciation fund, all as set forth in the bond ordinance. The Town covenants and agrees that on or before the maturity date hereof, this and other such temporary bonds, to the extent then outstanding, with accrued interest, shall be exchanged for, or paid from the proceeds of, such permanent and definitive bonds.

This bond may be redeemed at any time prior to maturity, from funds from any source, at a price of par and accrued interest to date of redemption upon ten (10) days prior written notice by first class mail to the owner hereof.

IT IS HEREBY CERTIFIED that all conditions, acts and things required to exist, to have happened and to have been performed precedent to and in the issuance of this bond do exist, have happened and have been performed in regular time, form and manner.

IN WITNESS WHEREOF, the Town of Austin, Arkansas has caused this bond to be signed by the Major and Town Recorder and sealed with the corporate seal on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 198\_\_.

TOWN OF AUSTIN, ARKANSAS

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Recorder

(SEAL)

RECORD OF PAYMENT OF ADVANCES

Amount of Total Principal Signature of

Date of Advances\* Advance Outstanding Town Recorder

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\*The date of each advance shall be the interest commencement date from which the principal amount of such advance bears interest.

Section 6. (c). So long as the bond is held, or payment of principal and interest thereon is insured, by the Government, the Town shall, at the option of the Government, prepay all or any part of any annual installment of interest or of principal and interest by making monthly payments in advance of the due date of the annual installment. The aggregate of the monthly payments made in any one calendar year upon direction of the Government shall not exceed the amount of the annual installment next due, but nothing herein shall be construed to prohibit or restrict the Town, at its option, from other prepayments as in this Ordinance provided. Monthly payments for the purpose of prepayment pursuant to this subsection shall be commenced, terminated and resumed from time to time as directed by the Government by notice to the Mayor.

Monthly payments shall be credited upon the annual installment next due. On each annual installment due date the Town shall pay, as the balance due on the annual installment, the difference, if any, between the amount of the annual installment if no prepayments had been made and the aggregate credits upon such annual installment. The amount of each monthly payment shall be applied first to the payment of accrued interest to the date of payment on the unpaid principal balance due on the bond, and the balance shall constitute a prepayment of principal. No such prepayment of principal shall, however, affect the obligation of the Town to pay and prepay annual installments in the dollar amounts scheduled in the bond and as provided herein and such annual installments shall be paid and prepaid until all principal of and interest on the bond has been fully paid.

The Mayor and Recorder shall, when and so often as requested by the Government, execute and deliver, on behalf of the Town, and appropriate agreement containing the substance of the subsection.

Section 7. That the Town has heretofore fixed water and sewer rates by Ordinance No. 6, adopted on the 2nd day of November, 1981, to be charged for the services of the System and reference is hereby made to the ordinance fixing the rates for the details thereof and other provisions pertaining thereto, which rates and provisions are hereby confirmed and continued.

The Town convents 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 to which System revenues are pledged, as the same become due and the Trustee’s and Paying Agent’s fees, create and maintain debt service reserves, and to make the required deposits for depreciation as specified by this Ordinance. The Town covenants 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 bonds are outstanding unless there is obtained from a certified public accountant not in the regular employ of the Town a certificate reciting the opinion that the proposed new rates will produce sufficient net revenues (net revenues being gross revenues to be derived during the next twelve (12) months less the reasonable anticipated cost of operation and maintenance for the next twelve (12)months and less the required deposits for depreciation of the System for the next twelve (12) months) equal to not less than 120% of the maximum amount that will become due in any year thereafter for principal, interest and Paying Agent’s fees on all bonds then outstanding to which System revenues are pledged.

Section 8. The Treasurer of the Town shall be custodian of the gross revenues derived from the operation of the System and shall give bond for the faithful discharge of his duties as such custodian. The amount of the bond shall at all times be at least equal to the total funds in his custody at any one time. From and after the delivery of any bonds issued under the provisions of this Ordinance, the System shall be continuously operated as a revenue-producing undertaking. All moneys received by the Treasurer shall be deposited by him in such depository or depositories for the Town as may be lawfully designated from time to time by the Town Council; subject, however, to the giving of security as now or hereafter may be required by law, and provided that each depository must hold membership in the Federal Deposit Insurance Corporation. All deposits shall be in the name of the Town and shall be so designated as to indicate the particular fund to which the revenues belong. Any deposit in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured by bonds or other direct or fully guaranteed obligations of the United States of America unless invested as herein authorized.

Section 9. (a) The Town covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell, lease, mortgage, pledge or otherwise encumber the same, or any substantial portion thereof, without the prior written approval of the registered owners of the 1967 Bonds and the bonds of this issue and the making of arrangements satisfactory for the adequate protection of the holders of the 1967 Bonds and these bones; provided, however, that nothing herein shall be construed to prohibit the Town from making such dispositions of properties of the System and such replacements and substitutions for properties of this System as shall be necessary or incidental to the efficient operation of the System as a revenue-producing undertaking.

(b) The Town covenants that it will at all times maintain rates and charges for the services of the System (including the increasing of the same if and as often as necessary) which will insure the prompt payment of all expenses of operation and maintenance, the prompt payment of the principal of , interest and Paying Agent’s fees in connection with the 1967 Bonds and these bonds, and the prompt provision for the depreciation of the System.

Section 10. Water and Sewer Revnue Fund. That all revenues derived from the operation of the System shall be paid into the special fund created pursuant to the 1967 Ordinance (and therein designated “Waterworks Revenue Fund”), which fund is hereby redesignated “Water and Sewer Revenue Fund.” Revenues in the Water and Sewer Revenue Fund are hereby pledged and shall be applied to payment of the expenses of operation and maintenance of the System, to the payment of the principal of and interest on all outstanding bonds \*(with Paying Agent’s fees, if any) to which System revenues are pledged, to the establishment and maintenance of debt service reserves and to the providing of a depreciation fund all in the manner hereinafter set forth in this Ordinance.

Section 11. On the first business day of each month there shall be transferred from the Water and Sewer Revenue Fund (a) to the Waterworks Revenue Bond Fund maintained in connection with the 1967 Bonds that amount necessary to pay maturing principal and interest on the outstanding 1967 Bonds, and to establish and maintain debt service reserves, and (b) to the Waterworks Depreciation Fund that amount of revenue derived from the water facilities necessary to comply with Section 6 of the 1967 Ordinance, as provided for and in full compliance with all applicable provisions of the 1967 Ordinance. When all outstanding 1967 Bonds have been paid, principal and interest, or provision made for their payment, then the transfer directed by this Section shall cease.

Nothing herein shall be construed to in any manner impair the security of the 1967 Bonds, or the priority of the pledge on revenues in favor of the 1967 Bonds, but it is covenanted that when all of the 1967 Bonds are paid (or the required provision made therefor), that the bonds of this issue will become first lien bonds in the sense that the pledge of revenues derived from this operation of this System in favor of these bonds will become a first and prior pledge on the revenues. Furthermore, it is expressly covenanted and agreed that the Town will not issue or attempt to issue bonds ranking, or claimed to rant, on a parity of security with the 1967 Bonds.

Section 12. Water and Sewer Operation and Maintenance Fund. That there shall be paid by the Treasurer from the Water and Sewer Revenue Fund into the fund, created pursuant to the 1967 Ordinance (and therein designated the “Waterworks Operation and Maintenance Fund”), which is hereby redesignated the “Water and Sewer Operation and Maintenance Fund” (“Operation and Maintenance Fund”), on the first day of each month while any of the bonds (temporary or permanent) are outstanding an amount sufficient to pay the reasonable and necessary expenses of operation, repair, maintenance and the insuring of the System for such month and from which disbursements shall be made only for those purposes. Fixed annual charges, such as insurance premiums and the cost of major repair and maintenance expenses may be computed and set up on an annual basis and one-twelfth (1/12) of the amount thereof may be paid into the Operation and Maintenance Fund each month.

If, in any month, for any reason there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of any deficiency shall be added to the amount otherwise required to be transferred and paid into the Operation and Maintenance Fund in the next succeeding month. If in any fiscal year a surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount estimated to be necessary to defray the reasonable and necessary cost of operation, repair, maintenance and insuring of the System during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus shall be transferred and deposited in the Water and Sewer Revenue Fund.

Section 13. Water and Sewer Revenue Bond Fund. (a) That after making the required payment into the Waterworks Revenue Bond Fund and Waterworks Depreciation Fund as provided in Section 11 above and into the Operation and Maintenance Fund as provided in Section 12 above, there shall be paid into a special fund in the name of the town which is hereby created and designated “Water and Sewer

Revenue Bond Fund” (the “Bond Fund”), the sums in the amounts and at the times hereinafter stated in subsection (b) for the purpose of providing funds for the payment of the principal of and interest on the bonds as they mature, and to establish a debt service reserve.

(b) There shall be paid into the Bond Fund on the first business day of each month until all outstanding bonds with interest thereon have been paid in full or provision mad for such payment, a sum equal to one-twelfth (1/12) of the installment of interest, or principal and interest, due on the next annual installment payment date (plus any additional amount that may be necessary at the time of the delivery of the bonds to fully provide for the first interest payment on the bonds, if any additional amount be required), on all outstanding bonds, plus the sum of $35.00, until a debt service reserve shall have been accumulated in the amount of $4,177. When the debt service reserve has been accumulated in the required amount, the monthly payments into the Bond Fund may be reduced to one-twelfth (1/12) of the installment of interest, or principal and interest, due on the next annual installment payment date, but if the debt service reserve becomes impaired, the additional payment of $35.00 shall be resumed until the impairment is cured.

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

(d) If, for any reason, the Town Treasurer shall fail at any time to make any of the required payment into the Bond Fund, or if for any reason the 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 principal of and interest on the bonds, but such reserve shall be reimbursed from the first available moneys in the Water and Sewer Revenue Fund by the increased monthly payments specified in (b) above. The debt service reserve shall be used solely as herein provided.

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

(f) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bonds, except as herein specifically provided. If a surplus shall exist in the Bond Fund over and above the amount necessary to insure the payment, when due, of principal and interest and over and above the debt service reserve, such surplus shall, at the option of the Town, either (1) be used for the prepayment or redemption of bonds prior to maturity, (2) be used for the construction of improvements and extensions to the System or (3) be transferred to the Water and Sewer Revenue Fund.

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

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

(i) Provision has been made for the payment of the principal of and accrued interest on the temporary bonds from the proceeds of the permanent bonds and the Town shall not be required to make any payments into the Bond Fund until delivery of the permanent bonds unless necessary to prevent a default on the temporary bonds, but the Town covenants to make payments into the Bond Fund at the times and in the amounts, if any, necessary to prevent a default in payment of principal or interest on the temporary bonds.

Section 14. Water and Sewer Depreciation Fund. After making the required payments into the Bond Fund and Depreciation Fund being maintained in connection with the 1967 Bonds, and making the required payments into the Operation and Maintenance fund and into the Bond Fund, there shall be paid by the Treasurer from the Water and Sewer Revenue Fund into a special fund in the name of the town herby created (and designated “Water and Sewer Depreciation Fund” (“Depreciation Fund”) on the first business day of each month, which any of the bonds (temporary or permanent) are outstanding, $15.00 per month until there is accumulated the amount of $1,800. So long as the required amount is maintained payments into the Depreciation Fund may cease but shall be resumed as necessary to maintain the required amount. Moneys in the Depreciation Fund shall be used solely for the purpose of paying the cost of replacements made necessary by the depreciation of the System or for the cost of economically justifiable extensions to the distribution system; provided, however, that moneys in the Depreciation Fund may be used to the extent necessary to prevent a default in the payment of the principal of and interest on the bonds as the same become due and to maintain the debt service reserve in the required amount.

If in any fiscal year a surplus shall be accumulated in the Depreciation Fund over and above the required amount, such surplus shall be transferred and paid into the Water and Sewer Revenue Fund.

Section 15. Upon retirement of all 1967 Bonds, the Waterworks Revenue Bond Fund maintained for the 1967 Bonds shall be abolished and all moneys on deposit in such fund shall be transferred and deposited in the Bond Fund created by Section 13 of this Ordinance.

Section 16. Any surplus in the Water and Sewer Revenue Fund, after making full provision for the other funds hereinabove provided for, may be used, at the option of the Town:

(a) for the redemption of outstanding 1967 Bonds or the bonds of this issue in the manner and upon the terms applicable to redemption prior to maturity; or

(b) for the construction of extensions, betterments and improvements to the System (including payment of the principal of and interest on bonds issued therefor but subject to the provisions herein set forth pertaining to parity bonds); or

(c) for any lawful municipal purpose.

Section 17. Payments from the respective funds shall be made by check or voucher, signed by the Town Treasurer and the Mayor, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

Section 18. The bonds paid either at or before maturity shall be canceled and shall not be reissued.

Section 19. The principal and interest installments shall be prepayable prior to maturity as provided in the bonds form in Section 6 hereof.

Section 20. As long as any of the bonds are outstanding, the Town 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 bonds, 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 Town of additional revenue bonds to finance or pay the cost of construction extensions, betterments and improvements to the System; however, any such additional bonds shall not be issued on a parity with the outstanding bonds of this issue unless and until there shall have been procured and filed in the office of the Town Recorder a statement by a certified public accountant not in the regular employ of the Town reciting the opinion that the net revenues (net revenues being gross revenues of the System 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% of the average annual debt service requirements (principal, interest and Paying Agent’s fees) on all outstanding bonds to which the revenues of the System are pledged and the bonds the proposed to be issued.

The additional bonds, the issuance of which is restricted and conditioned by this Section 20, shall not be deemed to mean bonds the security and source of payment of which are subordinate and subject to the priority of the bonds.

The provisions of this Section 20 may be waived by the holders of 75% in principal amount of the bonds at any time outstanding.

Section 21. It is covenanted and agreed by the Town with the holder or holders of the bonds that it will faithful and required by the Constitution and laws of the State of Arkansas and by this Ordinance, including, without limitation, the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, segregating the revenues of the System and applying them to the respective funds herein created.

It is further covenanted and agreed by the Town with the holder or holders of the bonds that the Town will maintain public liability insurance covering the Town’s ownership and operation of any motor vehicles in connection with the System, with maximum liability limits of not less than $10,000 for personal injury or death of a single person, $20,000 for personal injury or death of more than one person in a single accident or occurrence and $5,000 for property damage arising from a single accident or occurrence.

Section 22. The Town 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 Town, 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 holder of any of the bonds, or the agent or the representative of any bondholder, at reasonable times and under reasonable circumstances. The Town agrees to have these records audited by an independent certified public accountant at least once each year. If the United States of America holds any of the bonds, the Town will furnish to the United States of America, or, so long as any of the bonds remain outstanding, the Town will furnish, if so requested in writing, to any bondholder or registered owner: (1) On or before thirty (30) days after the close of each fiscal year a statement of the operations of the System for the past fiscal year in form and content in the manner hereinafter specified, and (2) on or before ninety (90) days after the close of each fiscal year, a copy of the audit report of the certified public accountant. Both reports required by the last preceding sentence shall contain at least the following information:

(a) comment regarding the manner in which the Town has complied with the covenants in this Bond Ordinance and recommendations for any changes or improvements in the operation of the System;

(b) Statement of income and expense for the System;

(c) Statement showing analysis of each fund including deposits, withdrawals and beginning and ending balances;

(d) Balance sheet for the System;

(e) Schedule of insurance policies and fidelity bonds showing, with respect to each policy and bond, the amount nature of risk covered, the expiration date, the name of the insurer;

(f) Names and titles of principal officers;

(g) Schedule of the number of customers (connected and unconnected to the System) and showing the rate schedule currently in effect;

(h) The current assessed valuation of all taxable real and personal property located in the Town, and a report on tax rates, levies and collections of the Town; and

(i) A general statement concerning any events or circumstances which possibly might affect the financial status of the System.

The reports referred to above shall cover the operations of the System for all of the last ensuing fiscal year. In the event of the Town fails or refuses to furnish or cause such reports to be furnished, any holder or registered owner of the bonds, any have the reports made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 23. The Town covenants and agrees that it will maintain the System in good condition and operate it in an efficient manner and at reasonable cost. While any bonds are outstanding, the Town agrees that it will insure, and at all times keep insured, in the amount of the actual value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State of Arkansas to assume the risk thereof, all above-ground structures of the System (except reservoirs, standpipes and elevated tanks) 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 Town 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 Water and Sewer Revenue Fund, and if such proceeds shall be insufficient for such purposes, the deficiency shall be supplied, first, from moneys in the Depreciation Fund, and third, from available moneys in the Water and Sewer Revenue Fund. Nothing herein shall be construed as requiring the Town to expend any funds for reconstruction, replacement or repair of the System or for operation and maintenance of the System or 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 Town from doing so.