

ORDINANCE NO. 1229

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY OF EUREKA SPRINGS, ARKANSAS; 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 THE PRINCIPAL AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Eureka Springs, Arkansas (the "City"), owns and operates water and sewer facilities, which water and sewer facilities are operated as one interrelated municipal undertaking (the "System"), and has determined that extensions, betterments and improvements (the "construction"), should be made to the sewer facilities in order that the City and its inhabitants may have adequate and proper water and sewer facilities; and

WHEREAS, the City 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 City 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, authorizing and issuing bonds is \$3,165,900; and

WHEREAS, the City does not have available funds to undertake the construction but can obtain the necessary funds by the issuance of Water and Sewer Revenue Bonds in the principal amount of \$880,000 and by funds to be provided by an agency or agencies of the United States of America or of the State of Arkansas and funds available from the City; and

WHEREAS, the City has outstanding an issue of Water and Sewer Refunding and Improvement Revenue Bonds, dated April 1, 1963 (the "1963 Bonds"), authorized by Resolution No. 58, adopted and approved January 24, 1963 (the "1963 Resolution"); and

WHEREAS, the City has outstanding an issue of Water and Sewer Revenue Bonds, dated November 19, 1981 (the "1981

Bonds"), authorized by Ordinance No. 1106, adopted and approved November 7, 1980 (the "1980 Ordinance"); and

WHEREAS, the City 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 \$880,000 in principal amount of Water and Sewer Revenue Bonds, at an interest rate of 5% per annum; and

WHEREAS, the City 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");

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

Section 1. That the construction be accomplished. The Mayor and City Clerk 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 \$880,000 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 City Council hereby finds and declares that the period of usefulness of the System after completion of the construction will be more than forty (40) years.

Section 4. That 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, and applicable decisions of the Supreme Court of the State of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), City of Eureka Springs, Arkansas, Water and Sewer Revenue Bonds are hereby authorized and ordered issued in the principal amount of \$880,000, the proceeds of the sale of which are necessary to finance the cost to the City of the construction, including necessary expenses incidental thereto, and expenses of issuing the bonds. The bonds shall be dated as of the date of their delivery and shall bear interest at the rate of 5% per annum. The principal of and interest on the bonds shall be payable in monthly amortized installments of principal and interest commencing twenty-five months from the date of the bonds and

continuing monthly thereafter on the same day; interest only shall be payable one month from date of the bonds and monthly thereafter during the first twenty-four months after the bonds are issued. 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 not later than 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 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 City to the extent thereof. The City Clerk 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 any bond has been fully paid, the bond shall be canceled and delivered to the City Clerk.

Section 5. The bonds shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City. The bonds are not general obligations of the City but are special obligations, 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 1963 Bonds and the 1981 Bonds. The bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. (a) That the bonds shall be in substantially the following form and the Mayor and City Clerk 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 CARROLL
CITY OF EUREKA SPRINGS
5% WATER AND SEWER REVENUE BOND

No. R-1

\$880,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Eureka Springs, Carroll County, Arkansas (the "City"), 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

EIGHT HUNDRED EIGHTY THOUSAND DOLLARS
(or the total principal amount outstanding as reflected
by the Record of Payment of Advances attached hereto)

with interest on the unpaid balance of each advance from the date of such advance at the rate of 5% per annum. The 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 the United States of America and shall be payable in the following installments on or before the following dates: Interest only one month from the date of this bond and monthly thereafter during the first twenty-four months from the date of the bonds, and amortized monthly installments of \$4,321 beginning twenty-five months from the date of this bond and monthly thereafter on the same day of each succeeding month until the principal and interest are fully paid, except that 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 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 City maintained by the City Clerk as Bond Registrar, and such payments shall fully discharge the obligation of the City to the extent of the payments so made.

This bond is issued for the purpose of financing the cost to the City of constructing extensions, betterments and improvements (the "construction") to the sewer facilities of the Water and Sewer System of the City, which water and sewer facilities are operated as one interrelated municipal undertaking (the "System"), costs of authorizing and issuing the bonds (with the balance of the costs to be provided by an agency or agencies of the United States of America and the State of Arkansas and available funds of the City), 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 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), and pursuant to Ordinance No. _____ of the City, duly adopted and approved on the _____ day of _____, 1985 (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 holders and registered owners of the bonds.

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

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 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 of System revenues to an issue of Water and Sewer Refunding and Improvement Revenue Bonds, dated April 1, 1963 (the "1963 Bonds") and an issue of Water and Sewer Revenue Bonds, dated November 19, 1981 (the "1981 Bonds") so long as any of the 1963 Bonds or 1981 Bonds are outstanding. A sufficient amount of System revenues to pay principal of and interest on this bond has been duly set aside and pledged as a special fund for that purpose, identified as the "1985 Water and Sewer Revenue Bond Fund," created by the Authorizing Ordinance. The City has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all times at least to provide for the payment of the reasonable expenses of operation and maintenance of the System, to 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, to 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 City Clerk by registered mail, and the assignee shall surrender this bond to the City Clerk 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 City Clerk), 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 time, 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 City of Eureka Springs, Arkansas, has caused this bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, with the manual signatures of the Mayor and City Clerk, and its corporate seal to be affixed, all as of the 27th day of July, 1985.

CITY OF EUREKA SPRINGS,
ARKANSAS

ATTEST:

Joanita Barber
City Clerk

By Donald L. Flinn
Mayor

(SEAL)

REGISTRATION CERTIFICATE

	:		:
Date of Registration:	Name of Registered Owner:		Signature of Bond Registrar
	:		:
	:		:
	:		:
	:		:
	:		:
	:		:
	:		:
	:		:

RECORD OF PAYMENT OF ADVANCES

<u>Date of Advance*</u>	<u>Amount of Advance</u>	<u>Total Principal Outstanding</u>	<u>Signature of City Clerk</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

Section 6. (b) That pending the preparation and delivery of the permanent and definitive bonds hereinabove authorized, temporary bonds in the aggregate principal amount of not to exceed \$880,000 shall be issued and sold from time to time 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 from 1 upwards, be dated the day of delivery (which shall be the date of the first advance of the purchase price), bear interest at the rate of _____ percent per annum, be sold at 100¢ on the dollar and be payable 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 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 CARROLL
CITY OF EUREKA SPRINGS
TEMPORARY WATER AND SEWER REVENUE BOND

No. _____

\$880,000

NOW ALL MEN BY THESE PRESENTS:

The City of Eureka Springs, Carroll County, Arkansas, hereby acknowledges itself indebted and promises to pay to

_____, at its offices in _____ County, Arkansas, or assigns, two years from the date hereof, the principal sum of

EIGHT HUNDRED EIGHTY THOUSAND DOLLARS
(or the total principal amount outstanding as reflected by the Record of Payment of Advances attached hereto)

with interest on the unpaid balance of each advance from the date of such advance at the rate of _____ percent per annum payable one year from the date hereof and at maturity.

This bond is one of an issue of temporary bonds in an aggregate amount not to exceed \$880,000 issued for the purpose of providing construction funds in anticipation of the issuance of permanent and definitive bonds for constructing extensions, betterments and improvements to the City's sewer facilities of the Water and Sewer System (the "System") in accordance with the bond ordinance of the City adopted on _____, 1985 (the "Authorizing Ordinance"). This temporary bond is a special obligation payable solely from revenues derived from the operation of the System and from the proceeds of permanent bonds. In this regard, the pledge of System revenues is subordinate to the pledge of System revenues to an issue of Water and Sewer Refunding and Improvement Revenue Bonds, dated April 1, 1963 (the "1963 Bonds") and an issue of Water and Sewer Revenue Bonds, dated November 19, 1981 (the "1981 Bonds") so long as any of the 1963 Bonds or 1981 Bonds are outstanding. The City has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all times at least to provide for the payment of the reasonable expenses of operation and maintenance of the System, to 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 Authorizing Ordinance. The City 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 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 form, time and manner.

IN WITNESS WHEREOF, the City of Eureka Springs, Arkansas has caused this bond to be signed by the Mayor and City Clerk and sealed with the corporate seal on this 23rd day of July, 1985.

ATTEST:

Janita S. Barber
City Clerk

CITY OF EUREKA SPRINGS, ARKANSAS

By Donald L. Humm
Mayor

(SEAL)

RECORD OF PAYMENT OF ADVANCES

<u>Date of Advance*</u>	<u>Amount of Advance</u>	<u>Total Principal Outstanding</u>	<u>Signature of City Clerk</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

Section 7. That the City has heretofore fixed rates to be charged for the services of the System and reference is hereby made to the Ordinances fixing the rates for the details thereof and other provisions pertaining thereto, which water and sewer rates and provisions are hereby confirmed and continued.

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 permanent 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 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 bonds are 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 produce sufficient net revenues (net revenues being gross revenues to be derived during the next twelve (12) months less the reasonably 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 Trustee's and Paying Agent's fees on all bonds then outstanding to which System revenues are pledged.

Section 8. That under the provisions of Ark. Stat. Ann. Section 19-4113 (Repl. 1980), a lien is fixed upon the land for any unpaid sewer charge, even though the use of the System is by a tenant or lessee instead of the owner. If any sewer charge is not paid on or before the tenth day after the bill therefor shall be rendered, a ten percent (10%) penalty shall be added, and if any sewer charge is not paid on or before the thirtieth day after the bill is rendered, suit shall be brought to enforce the lien and to collect the amount due, together with the expenses of the collection and a reasonable attorney's fee.

Section 9. That the Treasurer of the City 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 City as may be lawfully designated from time to time by the City Council; provided that each depository must hold membership in the Federal Deposit Insurance Corporation. All deposits shall be in the name of the City and shall be so designated as to indicate the particular fund to which the revenues belong. Any deposit in excess of the amount insured by 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 10. That all of the provisions of the 1963 Resolution and the 1980 Ordinance authorizing the issuance of the 1963 Bonds and the 1981 Bonds, respectively, 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, and to the rights and remedies of the holders of the bonds, 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. The effects of the above covenant shall be to continue the applicable provisions in full force and effect even after the payment of the 1963 Bonds and the 1981 Bonds and until the bonds of this issue are paid, or provision made therefor. In this regard, nothing herein shall be construed to impair in any manner the security of the 1963 Bonds or the 1981 Bonds or the priority of the pledge on revenues in favor of the 1963 Bonds and 1981 Bonds but it is covenanted that when all of the 1963 Bonds and the 1981 Bonds are paid (or the required provision made therefor), the bonds of this issue will become first lien bonds in the sense that the pledge of revenues derived from the operation of the 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 City will not issue or attempt to issue bonds ranking, or claimed to rank, on a parity of security with the 1963 Bonds or 1981 Bonds.

Section 11. That the City covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell or lease the same, or any substantial portion thereof, without the prior written approval of the holders of the bonds of this issue; 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 12. That there shall be transferred from the Water and Sewer Fund into the respective Bond Funds those amounts necessary to pay maturing principal and interest on the outstanding 1963 Bonds and 1981 Bonds and to establish and maintain the debt service reserve in connection therewith, in full compliance with all applicable provisions of the 1963 Resolution and 1980 Ordinance. When all outstanding 1963 Bonds and 1981 Bonds have been paid, principal and interest, or provision made for their payment, then the transfers directed by this Section shall cease. Any balance remaining in the respective Bond Funds shall be transferred to the Water and Sewer Fund.

Section 13. 1985 Water and Sewer Revenue Bond Fund.

(a) That after making the required payments into the Water and Sewer Operation and Maintenance Fund created and being maintained pursuant to the 1963 Resolution and 1980 Ordinance, and after making the required payments into the respective Bond Funds created and being maintained pursuant to the 1963 Resolution and the 1980 Ordinance there shall be paid into a special fund in the name of the City which is hereby created and designated "1985 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 of this issue 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 beginning the first month following the issuance of the permanent bonds until all outstanding bonds with interest thereon have been paid in full or provision made for such payment, a sum equal to the installment of interest, or principal and interest, due on the next monthly installment payment date on all outstanding bonds. Beginning in the first month following the date of the permanent bonds there shall be paid into the Bond Fund the additional sum of \$433.00 per month, until a debt service reserve shall have been accumulated in the amount of \$51,852. When the debt service reserve has been accumulated and remains in the required amount, the additional payment shall not be made, but if the debt service reserve becomes impaired the additional payments of \$433.00 per month shall be resumed until the impairment is cured.

(c) If the revenues of the System are insufficient to make any required payment 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 City Treasurer shall fail at any time to make any of the required payments 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. 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 City 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 City, 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 Fund.

(g) It shall be the duty of the City Treasurer to withdraw from the Bond Fund and to pay to the registered owner, on or before the date on which each installment hereunder is due, an amount equal to the amount of such installment. No withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance.

(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 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 14. That any surplus in the Water and Sewer Revenue Fund, created and being maintained under and pursuant to the provisions of the 1963 Resolution and the 1980 Ordinance, after making the required deposits in the other funds as set forth in the 1963 Resolution and the 1980 Ordinance and as set forth herein may be used:

(a) for the redemption of outstanding 1963 Bonds and 1981 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 15. That 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 16. That the bonds paid either at or before maturity shall be canceled and shall not be reissued.

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

Section 18. That as long as any of the bonds are 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 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 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 bonds of this issue unless and until there shall have been procured and filed in the office of the City Clerk 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 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 on all outstanding bonds 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 18, 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 18 may be waived by the holders of 75% in principal amount of the bonds at any time outstanding.

Section 19. That it is covenanted and agreed by the City with the holder or holders of the bonds 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 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 created by the 1963 Resolution, the 1980 Ordinance and this Ordinance.

The City covenants to maintain fire and extended coverage insurance with a responsible insurance company or companies licensed to write such insurance in the State of Arkansas, covering pumps, electrical items and all other above-ground structures except reservoirs, standpipes and elevated tanks. Such insurance shall be in amounts equal in the aggregate to the full insurable value of the insured property.

It is further covenanted and agreed by the City with the holder or holders of the bonds that the City will maintain automobile liability insurance covering the City's ownership and operation of a motor vehicle or vehicles in connection with 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.

Section 20. That the City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the bonds will not be used directly or indirectly in such manner as to cause the bonds to be treated as "arbitrage bonds" within the meaning of Section 103 (c) of the Internal Revenue Code of 1954, as amended.

Section 21. That the owner or owners of all improved property lying within the area that will be served by the sewer facilities, after the proposed construction has been completed, are hereby directed and required, upon written request from the

City, to connect all toilet and waste water facilities of such improved property with the sewer facilities; and the owners of property that is improved after the completion of the proposed construction shall, upon written request of the City, immediately connect the toilet and waste water facilities of such property with the sewer facilities. The required notice by the City shall be given at least thirty (30) days prior to the final date for connection, and if any property owner shall fail to make such connection after having been so requested in writing, the City hereby covenants and agrees to institute appropriate proceedings in a court of competent jurisdiction to compel such connection. Furthermore, any property owner who fails or refuses to connect his improved property with the sewer facilities after having been so requested by the City shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$2.00 and not more than \$10.00, and each day's failure or refusal after the expiration of the time fixed in the notice to make the connection shall be a separate offense; provided, however, that the provisions hereof pertaining to a misdemeanor shall be effective only in the event that the City Health Officer, or other duly designated individual or Board has found and declared that such failure on the part of any particular property owner constitutes a hazard to the public health and safety of the City and its inhabitants.

Section 22. That when the bonds herein authorized (temporary and permanent bonds) have been executed by the Mayor and City Clerk and the seal of the City impressed, as herein provided, they shall be delivered to the purchaser upon payment of the purchase price or first advance thereon. The proceeds from the sale of the bonds shall be disbursed as follows:

(a) In the case of the temporary bonds the amount necessary to provide for the payment of interest that will become due during the construction period shall be deposited in the Bond Fund and the balance shall be deposited in a special account of the City designated "Water and Sewer Construction Fund" (the "Construction Fund") in a bank that is a member of the Federal Deposit Insurance Corporation and used for the payment of the costs of construction and paying necessary expenses incidental thereto, including legal and engineering fees and expenses.

(b) In the case of the permanent bonds the amount necessary, if any, to pay in full the outstanding principal and accrued interest to date of payment of any temporary bonds shall be used for that purpose, and, the amount, if any, necessary to provide for the payment of interest during the construction period shall be deposited in the Bond Fund, and the balance shall be deposited into the Construction Fund and used for the

accomplishment of the improvements and the expenses incurred by the City in authorizing, selling and issuing the bonds. Moneys in the Construction Fund in excess of the amount insured by the Federal Deposit Insurance Corporation 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.

(c) Prior to the commencement of the construction or prior to issuance of the permanent bonds, whichever occurs first, the City shall deposit \$50,000 into the Construction Fund. Such deposit shall be made from available funds of the City and not from the proceeds of temporary or permanent bonds or from funds provided by an agency of the United States of America or an agency of the State of Arkansas.

(d) The moneys in the Construction Fund shall be disbursed solely in payment of the cost of the construction, paying necessary expenses incidental thereto and paying expenses of issuing the bonds. Disbursements shall be on the basis of checks or requisitions which shall contain at least the following information: The person, 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 bonds) 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 Construction Fund payable to the person, firm or corporation designated in the requisition. The depository of the 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.

(e) When the construction shall have been completed, this fact shall be evidenced by the filing with the depository in which the Construction Fund is deposited 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 Construction Fund have been discharged. Upon receipt of the above certificate the depository with which the Construction Fund is deposited 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 City Council and with any such remaining balance to be transferred into the Bond Fund, and applied immediately to the prepayment of bonds, in multiples of \$1,000 in principal amount. Any remaining balance of less than \$1,000 shall be deposited in the debt service reserve in the Bond Fund. The City shall require the depository to execute an appropriate Deposit Agreement embodying the substance of the provisions of this Section 22.

Section 23. (a) That moneys held for the credit of the Construction Fund 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 Government, which mature or which shall be subject to redemption by the holder or registered owner, at the option of such holder or registered owner, not later than the date or dates when the moneys will be needed for proper disbursements.

(b) Moneys held for the credit of the debt service reserve in the Bond Fund shall 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 Government, 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 (10) years after the date of investment.

(c) Moneys held for the credit of any other fund may, at the option of the City, be invested and reinvested by the City in direct obligations of, or obligations the principal of and interest on which are fully guaranteed by, the United States Government, 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) 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) Moneys so invested in United States Government obligations, as above defined, need not be secured by the depository bank.

Section 24. That in the event the office of Mayor, City Clerk, City Treasurer or City Council shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law. In this regard, if the City should ever fail to maintain the office of Treasurer, the duties of the Treasurer hereunder shall be performed by the Clerk.

Section 25. That the provisions of this Ordinance shall constitute a binding contract between the City and the registered owners of the outstanding bonds 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 seventy-five percent (75%) in aggregate principal amount of the bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or interest on any bond issued hereunder, or (b) a reduction in the principal amount of any 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) the creation of a privilege or priority of any bond or bonds over any other bond or bonds, or (e) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 26. That the Mayor is hereby directed to publish for one insertion in a newspaper with a general circulation in the City, this Ordinance, to which shall be attached a Notice signed by him in substantially the following form:

NOTICE

Notice is hereby given that the City Council of the City of Eureka Springs, Arkansas, has adopted the Ordinance set out below authorizing the issuance of Water and Sewer Revenue Bonds described in the Ordinance; that any person interested may appear before the City Council on the _____ day of _____, 1985, at _____ .m., at the usual meeting place of the Council held in Eureka Springs and present protests. At such hearing all objections and suggestions will be heard, and the Council will take such action as is deemed proper in the premises.

DATED this _____ day of _____, 1985.

Donald L. Shum
Mayor

Section 27. That this Ordinance shall not create any right of any kind, and no right of any kind shall arise hereunder pursuant to it, until the bonds authorized by this Ordinance shall be issued and delivered.

Section 28. 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 29. That references in this Ordinance to "holder" or "bondholder" shall be deemed references to the registered owner of the bonds.

Section 30. That all ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 31. That it is hereby ascertained and declared that the sewer facilities of the City are inadequate to serve the needs of the City and the inhabitants thereof, thus endangering the life, health and safety of the inhabitants and their property, and that the only practical manner in which those hazards can be eliminated is by the construction of extensions, betterments and improvements to be financed by these bonds. It is, therefore, declared that an emergency exists, and this Ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage.

PASSED: July 23, 1985.

ATTEST:

Joanita S. Bauer
City Clerk

APPROVED:

Donald L. Hunt
Mayor

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Eureka Springs, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 1229, adopted at a _____ session of the City Council of the City of Eureka Springs, Arkansas, held at the regular meeting place in said City at 10 o'clock A.m., on the 23rd day of July, 1985, and that the Ordinance is of record in Ordinance Record Book No. 5, Page _____, now in my possession.

GIVEN under my hand and seal on this 23rd day of _____, 1985.

July

Joanta S. Barner
City Clerk

(SEAL)