

# **ORDINANCE NO. 63**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION WATER IMPROVEMENT BONDS FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF CONSTRUCTING EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM SERVING THE CITY OF CHERRY VALLEY, ARKANSAS; LEVYING A TAX SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

*WHEREAS, the City of Cherry Valley, Arkansas, is a City of the second class (the "City"); and*

*WHEREAS, by Ordinance No. 60, duly passed by the City Council of the City, and approved on the 19th day of September, 1978, there was submitted to the qualified electors of the City the question of issuing, under Amendment No. 13 to the Constitution of the State of Arkansas, General Obligation Water Improvement Bonds in the principal amount of \$105,000 (the "bonds") for the purpose of financing a portion of the cost of constructing extensions, betterments and improvements to the waterworks system serving the City (the "Construction"), paying necessary expenses incidental thereto and paying the expenses of issuing the bonds, with the remainder of the cost to be furnished from grant funds from an agency or agencies of the Government of the United States of America, to the extent available, and from the proceeds of revenue bonds of the City; and*

*WHEREAS, at the general election held November 7, 1978 a majority of the electors voting on the question approved the issuance of the bonds; and*

*WHEREAS; the results of the election were announced by the Mayor by a proclamation duly published on November 22, 1978, in a newspaper on bona fide circulation in the City;*

*NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cherry Valley, Arkansas:*

## **SECTION 1:**

*That the construction be accomplished.*

## **SECTION 2:**

*That under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment No. 13 to the Constitution of the State of Arkansas, City of Cherry Valley, Arkansas, General Obligation Improvements Bonds are hereby authorized and ordered issued in the total principal amount \$105,000 the proceeds of the sale of which are necessary to provide sufficient funds for accomplishing the construction.*

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*The bonds shall be dated January 1, 1979, interest thereon will be payable on January 1 thereafter, and the bonds will mature on January 1 in each of the years as follows (but shall be subject to redemption prior to maturity as hereinafter set forth):*

<i>Maturity</i>	<i>Principal Amount</i>	<i>Maturity</i>	<i>Principal Amount</i>
1982	1,313	1999	3,010
1983	1,378	2000	3,160
1984	1,448	2001	3,318
1985	1,520	2002	3,484
1986	1,596	2003	3,658
1987	1,676	2004	3,841
1988	1,760	2005	4,033
1989	1,848	2006	4,235
1990	1,940	2007	4,446
1991	2,037	2008	4,669
1992	2,139	2009	4,902
1993	2,246	2010	5,147
1994	2,358	2011	5,405
1995	2,476	2012	5,675
1996	2,600	2013	5,959
1997	2,730	2014	6,127
1998	2,866		

*The bonds shall be numbered from R-1 upward in order of maturity and shall be delivered from time to time in numerical order as moneys are needed for the construction. There may be one or more bonds maturing in each year and the bonds shall be in such denominations as may be determined by the Mayor.*

*The bonds will be issued as typewritten bonds, registered as to both principal and interest, payable to the registered owner, or assigns, as set forth hereinafter in the bond form.*

*Payment of interest shall be check or draft mailed to the registered owner thereof, without presentation or surrender of the bonds and such payments shall discharge the obligation of the City to extent thereof. The City Recorder shall keep payment record and make proper notations thereon of all payments of interest. Payment of principal shall be mad upon surrender of the bonds to the City Recorder.*

*Payment of principal and interest shall be in any coin or currency of the United States of America which, on the respective dates of payment, is legal tender for the payment of public and private debts. When the principal of and interest on any bond have been fully paid, the bond shall be cancelled.*

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## SECTION 2: (Continued)

*The bonds shall be sold at public sale after advertisement in such publications as the Mayor shall determine will insure adequate notice and opportunity for bidding. The terms of the sale of the bonds and designation of the Trustee and Paying Agent (if necessary) shall be submitted to the City Council for approval by resolution. In its resolution the City Council shall set forth the details of the bonds as they are being issued, including numbering, denominations and a schedule reflecting the annual principal maturities, the semiannual interest requirements and the total requirements. The Notice of Sale for the bonds shall be in substantially the following form:*

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## NOTICE OF SALE CITY OF CHERRY VALLEY, ARKANSAS 5% GENERAL OBLIGATION WATER IMPROVEMENTS BONDS DATED JANUARY 1, 1979

Notice is hereby given that the City of Cherry Valley, Arkansas (the "City"), will offer for sale on sealed bid its proposed issue of \$105,000 City of Cherry Valley, Arkansas General Obligation Water Improvement Bonds, dated January 1, 1979 (the "Bonds"). The bonds are being issued for the purpose of financing a portion of the cost of constructing extensions, betterments and improvements to the waterworks system serving the City, at an estimated cost of \$500,000, with the balance thereof to be obtained as grant funds from an agency or agencies of the Government of the United States of America, and, to the extent, if any, necessary proceeds of revenue bonds of the City. The bonds will bear interest at the rate of 5% per annum.

The bonds are being issued under the provisions of and pursuant to the authority contained in Amendment No. 13 to the Constitution of the State of Arkansas. The bonds will be general obligations of the City secured by the full faith, credit and taxing power of the City under Amendment No. 13, including a continuing annual tax of ten (10) mills on the dollar of the assessed valuation of the taxable real and personal property in the City, which will be pledged to the payment of the principal of and interest on the Bonds. The assessed valuation of the taxable real and personal property in the City for the year 1977, the latest assessment of record, is \$722,500.00.

The issuance of the Bonds has been approved by the electors of the City at an election held for that purpose on November 7, 1978.

The bonds will be dated January 1, 1979, interest thereon will be payable on January 1, 1980 and on each January 1 thereafter, and the Bonds will mature on January 1 in each of the years as follows (but shall be subject to redemption prior to maturity as hereinafter set forth):

<i>Maturity</i>	<i>Principal Amount</i>	<i>Maturity</i>	<i>Principal Amount</i>
1982	1,313	1999	3,010
1983	1,378	2000	3,160
1984	1,448	2001	3,318
1985	1,520	2002	3,484
1986	1,596	2003	3,658
1987	1,676	2004	3,841
1988	1,760	2005	4,033
1989	1,848	2006	4,235
1990	1,940	2007	4,446

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1991	2,037	2008	4,669
1992	2,139	2009	4,902
1993	2,246	2010	5,147
1994	2,358	2011	5,405
1995	2,476	2012	5,675
1996	2,600	2013	5,959
1997	2,730	2014	6,127
1998	2,866		

*Supplemental and dual coupons will not be permitted and the Bonds will not be subject to conversion.*

*No bid of less than par and accrued interest will be entertained. The award, if made, will be to the bidder whose bid results in the lowest net interest cost to the City determined by computing the total interest cost from the date of the Bonds to maturity and deducting there from any premium bid.*

*The bonds will be calibrated for payment prior to maturity in inverse numerical order at a price of par and accrued interest as follows: From funds from any source on any interest payment date.*

*The City will covenant that surplus tax collections, being collection from the 10 mill continuing annual tax in excess of the amount necessary to insure the prompt payment of the principal of, interest on an Trustee's and Paying Agent's fees in connection with the Bonds as the same become due, must be used from time to time on each interest payment date as and to the extent available to redeem the outstanding bonds.*

*The purchaser shall have the privilege of naming the Trustee and Paying Agent or the purchaser may specify that there shall be no Trustee or Paying Agent.*

*The expenses of the issue, including, without limitation, the publication expense, printing of the bonds, the authentication fee, and the fee of Friday, Eldredge & Clark, Bond Council, Littler Rock, Arkansas, will be paid by the City.*

*The Bonds will be sold on sealed bids which will be received until 10 o'clock a.m., on the 7th day of November, 1975. Each bid must be enclosed in a sealed envelop marked "Proposal for \$105,000 City of Cherry Valley, Arkansas 5% General Obligation Water Improvement Bonds, dated January 1, 1979." and addressed to Mayor, City of Cherry Valley, Arkansas 72324. No contingent provisions may be included in any bid. The City reserves the right to reject any and all bids.*

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*For further information, address the undersigned or Friday, Eldredge & Clark, The First National Building, Twentieth Floor, Little Rock, Arkansas 72201.*

**GIVEN this** \_\_\_\_\_ **day of** \_\_\_\_\_, 1979.

**City of Cherry Valley, Arkansas**

**By** \_\_\_\_\_ **Mayor**

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## **SECTION 5:**

*That the bonds shall be executed on behalf of the City by the Mayor and City Recorder and shall have impressed thereon the seal of the City.*

## **SECTION 4:**

*That the bonds shall be typewritten and in substantially the following form:*



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UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF CROSS  
CITY OF CHERRY VALLEY  
5% GENERAL OBLIGATION WATER IMPROVEMENT BOND

No. R-\_\_\_

\$\_\_\_\_\_

## KNOW ALL MEN BY THESE PRESENTS:

*That the City of Cherry Valley, Cross County, Arkansas (the "City"), acknowledges itself to owe for value received promise to pay to the registered owner, or assigns, the principal sum of*

### DOLLARS

*in lawful money of the United States of America, on January 1, \_\_\_\_, with interest thereon at the rate of five percent (5%) per annum from date until paid. 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. Interest shall be payable on January 1, 1980 and annually thereafter on each January 1.*

*This bond is one of an issue of City of Cherry Valley, Arkansas General Obligation Water Improvement Bonds, numbered from R-1 upward (the "bonds"). The bonds are issued for the purpose of financing a portion of the cost of constructing extensions, betterments and improvements to the waterworks system serving the City (the "Construction") with the remainder of the cost to be furnished from grant funds from an agency or agencies of the Government of the United States of America, and, to the extent, if any, necessary proceeds of revenue bonds of the City.*

*Payments of interest due hereon shall be made, 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 Recorder as bond registrar, and such payments shall fully discharge the obligation of the City to the extent of the payments so made. Payments of principal of this bond shall be made upon representation of this bond to the City Recorder.*

*The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, particularly Amendment No. 13 to the Constitution of the State of Arkansas, and pursuant to Ordinance No. \_\_\_\_\_ of the City, passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 1979 (the "Authorizing Ordinance"), and an election duly held at which the majority of the legal voters of the City voting on the question voted in favor of the issuance of the bonds. Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the registered owner of this bond. The bonds are general obligations of the City, payable from the*



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## General Obligation Bond Form Continued

*proceeds of a continuing annual tax of ten (10) mills on the dollar of the assessed valuation of the taxable real and personal property in the City (the "special tax"), levied by the City Council under the authority of Amendment No. 13 to the constitution of the State of Arkansas, and the said City hereby pledges its full faith, credit and taxing power, including the special tax, for the payment of the bonds. The City has convenient and agreed that surplus tax collections, being necessary to insure the prompt payment of the principal of, and interest on the bonds as the same become due, must be used from time to time on each interest payment date as and to the extent available to redeem the outstanding bonds prior to maturity in inverse numerical order.*

*The bonds are also subject to redemption prior to maturity, in inverse numerical order, in whole or in part, at the option of the City, from funds from any other source on any interest payment date.*

*This bond may be assigned, and upon assignment the assignor shall promptly notify the City Recorder by registered mail, and the assignee shall surrender this bond to the City Recorder for transfer on the registration records. Every assignee shall take this bond subject to all payments of interest (as reflected by the Payment Record maintained by the City Recorder), prior to such surrender for*

*IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exists, happened and be performed, under the Constitution and laws of the State of Arkansas, particularly Amendment No. 13 to the Constitution of the State of Arkansas, 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 institutional or statutory limitation; and that a tax sufficient to pay the bonds and interest thereon has been duly levied in accordance with amendment No. 13 to the Constitution of the State of Arkansas and made payable annually until all of the bonds and interest thereon have been fully paid and discharged.*

*IN WITNESS WHEREOF, the City of Cherry Valley, Arkansas, has caused this bond to be executed in its name by its Mayor and City Recorder and its corporate seal to be affixed, all as of the first day of January, 1979.*

CITY OF CHERRY VALLEY, ARKANSAS

ATTEST

BY \_\_\_\_\_ MAYOR

\_\_\_\_\_  
CITY RECORDER

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## REGISTRATION CERTIFICATE

DATE OF REGISTRATION : NAME OF OWNER: SIGNATURE OF CITY RECORDER

[illegible]

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## SECTION 5:

*That in order to pay the bonds as they mature, with interest thereon, there is hereby levied upon all taxable real and personal property within the City a continuing annual tax of ten (10) mills (the "special tax") on each dollar of assessed valuation to be collected annually as long as may be necessary to pay the principal of, interest on and Paying Agent's fees in connection with the bonds. The City Recorder is directed to transmit a copy of this ordinance to the County Clerk of Cross County, Arkansas, to the end that the special tax may be extended on the tax books of the County and collected annually along with the other taxes until the bonds and interest thereon are paid in full or until adequate provision is made for their payment. The City covenants and agrees that all of the revenues from the special tax shall be placed in a separate fund which is hereby created and designed "General Obligation Water Improvement Bond Fund" (the "Bond Fund"), in a bank or banks designated from time to time by the City Council of the City holding membership in the Federal Deposit Insurance Corporation, and used solely for the payment of the principal of and interest on the bonds. The amount of the deposit in excess of that insured by the Federal Deposit Insurance Corporation must be continuously secured by bonds or other direct of fully guaranteed obligations of the United States of America, except that moneys invested as hereinafter provided need not be so secured. Moneys in the Bond Fund may be invested in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, which mature or are subject to redemption at the option of the holder at or prior to the date the moneys will be needed to meet debt service requirements on the bonds. All such investments shall be considered a part of the Bond Fund from which made all earnings and profits credited to, and all losses charged against, such fund. The City covenants that all revenues derived from the special tax in excess of the amount necessary to insure the prompt payment of the principal of and interest on the bonds as they mature will be used from time to time on January 1 of each year as and to the extent available for the redemption of bonds prior to maturity.*

## SECTION 6:

*That for the prompt payment of the bonds, with interest, the City hereby pledges its full faith, credit and taxing power, including the special tax levied in Section 5 of this Ordinance.*

## SECTION 7:

*That in order to pay the principal of and interest on the bonds as they mature and as they are redeemed prior to maturity, they are hereby appropriated the entire proceeds of the special tax levied in section 5 hereof, and if the proceeds are not sufficient to pay mature, then there are hereby appropriated sufficient additional funds out of the general revenues of the City to accomplish the payment at maturity.*

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## SECTION 8:

*That the bonds shall be callable for payment prior to maturity in accordance with the terms set out in the face of the bond form in Section 4 of this Ordinance.*

## SECTION 9:

*That the Treasurer of the City is hereby ordered and directed to pay to the registered owner (from time to time) of each bond issued here under, an amount sufficient to pay, as due, all installments of interest and the principal of the bonds. Such payments are to be made from the funds herein appropriated. This instruction to the Treasurer is irrevocable and may be enforced by mandamus.*

## SECTION 10:

- (a) If there be any default in the payment of the principal of and interest on the bonds, or if the City defaults in any Bond Fund requirement or in the performance of any other covenant contained in this ordinance, the registered owner of any bond may, by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the States of Arkansas and under this ordinance. The registered owners of a majority in principal amount of outstanding bonds may, upon any such default, protect and enforce the rights of the registered owners by acceleration, instituting appropriate proceedings in law or equity or other action deemed necessary or desirable by such registered owners.*
- (b) It is understood and intended that the registered owners of the bonds hereby secured shall have no right in any manner whatever by their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right here under except in the manner herein provided, that all proceeding at law or in equity shall be instituted, and that any individual rights of action or other right given by law are restricted by this ordinance to the rights and remedies herein provided.*
- (c) No remedy herein conferred upon or reserved to the registered owners is intended to be exclusive of any other remedy shall be in addition to every other remedy given here under or given by any law or by the Constitution of the State of Arkansas.*
- (d) No delay or omission of the registered owners to exercise any right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to the registered owners may be exercised from time to time and as often as may be deemed expedient.*

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- (e) *The registered owners of a majority in principal amount of the outstanding bonds may waive and default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.*

## SECTION 11:

- (a) *That the bonds herein authorized to be executed by the Mayor and City Recorder and the seal of the City impressed as herein provided, and shall be delivered to the purchaser from time to time as funds are needed upon payment in cash of the purchase price and accrued interest from January 1, 1979 to date of delivery.*

*The aggregate of the purchase price for all bonds is hereinafter referred to as "total sales proceeds." The amount of total sale proceeds necessary to provide for the payment of the interest on the bonds delivered that will become due on January 1, 1980 shall be deposited in the Bond Fund, the City expressly reserving the right to reimburse the Constitution Fund (hereinafter identified) from the Bond Fund in the amount of such deposit.*

- (b) *The balance of the total sale proceeds shall be deposited in a special account of the City hereby created and designated the "Constitution Fund" in a bank that is a member of the Federal Deposit Insurance Corporation. The moneys in the Construction Fund shall be used for accomplishing the construction, paying expenses incidental thereto and paying the expenses of issuing the bonds, with any unexpended balance to be deposited in the Bond Fund. Disbursements from the Construction Fund shall be on the basis of checks or requisitions signed by the Treasurer of the City.*
- (c) *Moneys on deposit in the Construction Fund in excess of the amount insured by the Federal Deposit Insurance Corporation must be continuously secured by bonds or other direct or fully guaranteed obligations of the United States of America; provided, however, moneys in the Construction Fund that are invested as hereinafter provided need not be so secured. Moneys in the Construction Fund may be invested in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, having maturity dates, or subject to redemption at the option of the holder, not later than the date or dates on which moneys will be needed for accomplishing the construction.*



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## **SECTION 12:**

- (a) *That the terms of this Ordinance shall constitute a contract between the City and the holders and registered owners of the bonds and no variation or change in the undertaking herein set forth shall be made while any of these bonds are outstanding, except as hereinafter set forth in subsection (b), and the holder or registered owner of any bonds may at any time for and on his own behalf or for and on behalf of all bondholders enforce the obligations of the City by proper suit for that purpose.*
- (b) *Subject to the terms and provisions contained in this section and not otherwise, the registered owners of sixty-six and two-thirds percent (66-2/3%) in 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 the interest on any bond issued here under, or (b) a reduction in the principal amount of any bond or the rate of interest thereon or (c) the creation of a pledge of tax revenues other than the pledge created by this ordinance.*

## **SECTION 13:**

*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 "arbitrary bonds" within the meaning of Section 103 (c) of the Internal Revenue Code of 1954, as amended.*

## **SECTION 14:**

*That the provisions of this ordinance are separable and in the event that any section or part thereof shall be held to be invalid, such invalidity shall not affect the remainder of this ordinance.*

## **SECTION 15:**

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

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## **SECTION 16:**

*That this ordinance shall not create any right of any character shall arise under or pursuant to it until the bonds authorized by this ordinance shall be issued and delivered.*

## **SECTION 17:**

*That it is hereby ascertained and declared that the above described construction to be financed out of the proceeds of the bonds authorized hereby are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The construction cannot be accomplished without the issuance of these bonds, and therefore, it is declared that an emergency exists and this ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.*

**PASSED: September 24, 1979.**

**APPROVED:**

**BY Howard H. Beasley MAYOR**

**ATTEST:**

**Thomas J. Rowland City Recorder**