

**ORDINANCE NO. 137**

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

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

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

"Authorized Officers" means Forrest M. Wood, Mayor, and Stacey Bennett, City Clerk.

"Construction Fund" means a special fund which has been designated City of Cherry Valley 2010 Water and Sewer Construction Fund.

"Depreciation Fund" means a special fund which has been designated City of Cherry Valley 2010 Water Depreciation Fund.

"Issuer" means the City of Cherry Valley, Arkansas.

"Memorandum of Agreement" means an agreement between the Issuer and Arkansas Natural Resources Commission – Project No. WRD-003-729, Loan No. 008CO-CGO-L dated July 30, 2010.

"Operation and Maintenance Fund" means a special fund which has been designated City of Cherry Valley Operation and Maintenance Fund.

"Rebate Amount" shall mean all amounts to be paid to the United States Treasury in accordance with the Rebate Agreement, if any, executed and delivered by the Issuer.

"Revenue Fund" means a special fund which has been designated City of Cherry Valley 2010 Water and Sewer Revenue Fund.

Section 2. The project is to provide a booster pumping station and several water main connections to interconnect the City System and the Cross County Rural Development Authority System previously purchased by the City (the "Improvements"). The

Improvements shall be accomplished. The Authorized Officers are hereby authorized to take, or cause to be taken, all action necessary to accomplish the Improvements and to execute all required contracts and documents, including but not limited to the Memorandum of Agreement and a Non-Arbitrage Certificate.

The City Council of the City of Cherry Valley, Arkansas, hereby finds and declares that the period of usefulness of the System will be more than 40 years, which is longer than the term of the Bond.

Section 3. (a) Under the authority of the laws of the State of Arkansas, including particularly the Acts (as defined in the bond form in Section 5), the issuance of the Bond is hereby authorized and the Bond is ordered issued for the purposes of accomplishing the Improvements and paying necessary expenses incidental thereto and to the issuance of the Bond.

(b) The Bond shall mature on the Maturity Date and bear interest from the Date of Issue at the Interest Rate. Principal of and interest on the Bond shall be payable according to the Payment Schedule.

(c) The Bond shall be issuable only as fully registered Bond without coupons in one denomination and shall be numbered "R-1".

(d) The Trustee is designated to act for the Registered Owner.

(e) The Bond shall be dated the Date of Issue. The Bond, upon subsequent transfer, shall be exchanged for a new Bond dated as of the Payment Date to which interest has been paid, or if it is transferred prior to a date on which any interest has been paid, it shall be dated the Date of Issue. Principal and interest on the Bond shall be payable on the Payment Date. Payment of each installment of principal and interest shall be made to the person in whose name the Bond is registered on the registration books of the Issuer maintained by the Trustee, as bond registrar, at the close of business on the Record Date, by check or draft, mailed by the Trustee to such Registered Owner, at his address on such registration books maintained by the Trustee, as bond registrar, at the close of business on the Record Date, irrespective of any transfer or exchange of any such Bond subsequent to such Record Date, and prior to such Payment Date, by check or draft mailed by the Trustee to such Registered Owner, at his address on such registration books. Final payment of principal of the Bond shall be payable at the principal corporate trust office of the Trustee.

(f) Only such Bond as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth herein duly executed by the Trustee shall be entitled to any right or benefit hereunder. No Bond shall be valid and obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed by the Trustee, and such certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder.

(g) In the case of the Bond being destroyed or lost, his filing with the Trustee evidence satisfactory to it that the Bond was destroyed or lost, and of his ownership thereof, and furnishing the Issuer and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. Upon the issuance of a new Bond under this Section, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

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

(i) No charge shall be made to any Registered Owner of any Bond for the privilege of transfer, but any Registered Owner of the Bond requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Bond upon each transfer and any other expenses of the Issuer or the Trustee incurred in connection therewith, shall be paid by the Issuer.

(j) The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute Registered Owner thereof for all purposes, and payment of or on account of the principal or interest of any Bond shall be made only to or upon the order of the Registered Owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. The Issuer shall not be affected by any notice to the contrary.

(k) In any case where the Payment Date or the date fixed for redemption of any Bond shall be a Saturday or Sunday or shall be in the State of Arkansas a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day not a Saturday or Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on the Payment Date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the Payment Date or date fixed for redemption.

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

(m) The Bond shall be issued subordinate to (a) a 5% Note payable to USDA Rural Development maturing in 2013; (b) a 5% Note payable to USDA Rural Development maturing in 2018; and (c) a 5.25% Note payable to USDA Rural Development maturing in 2034.

Section 4. The sale of the Bond to the Arkansas Natural Resources Commission ("ANRC") for the purchase price of par is hereby authorized subject to the Interest Rates, Maturity Date and other terms and provisions set forth in detail herein. At closing, the Issuer will pay ANRC a servicing fee in the amount of \$60,000. The Memorandum of Agreement, in substantially the form submitted to this meeting, is hereby approved. The Mayor is hereby authorized and directed to execute and deliver the Memorandum of Agreement on behalf of the Issuer and to take all action required on the part of the Issuer to fulfill its obligations under the Memorandum of Agreement. The Mayor is further authorized and directed to execute and deliver any necessary revision to the Memorandum of Agreement on behalf of the Issuer in order to modify any provisions thereof to conform to the terms of this Ordinance.

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

(FORM OF BOND)

REGISTERED  
R-1

REGISTERED  
\$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
CITY OF CHERRY VALLEY, ARKANSAS  
WATER AND SEWER REVENUE BOND

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

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

"Aggregate Principal Amount" means \$\_\_\_\_\_.

"Bond Fund" means a special fund which has been designated City of Cherry Valley 2010 CGO Water and Sewer Revenue Bond Fund.

"Bond" means a bond issued by the Issuer on the Date of Issue in the Aggregate Principal Amount.

"Date of Issue" means \_\_\_\_\_, 2010.

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

"Improvements" means providing a booster pumping station and water main connections to interconnect the Cherry Valley water system with the Cross County Rural Development Authority System.

"Interest Rate" means \_\_\_\_\_%.

"Issuer" means City of Cherry Valley, Arkansas.

"Issuer's Authorizing Action" means City of Cherry Valley, Arkansas, Ordinance No. \_\_\_\_\_ adopted and approved by Issuer on \_\_\_\_\_, 2010.

"Maturity Date" means \_\_\_\_\_ 1, 20\_\_\_\_.

"Payment Date" means \_\_\_\_\_ 1, 2010 and semi-annually on the first day of December and the first day of June thereafter.

"Payment Schedule" means \$\_\_\_\_\_ on \_\_\_\_\_ 1, 2010 and, thereafter, equal semi-annual installments of \$\_\_\_\_\_ on each Payment Date to and including \_\_\_\_\_ 1, 20\_\_\_\_, with \$\_\_\_\_\_ due on the Maturity Date.

"Principal Amount" means \$\_\_\_\_\_.

"Prior Issues" means: (a) a 5% Note payable to USDA Rural Development maturing in 2013; (b) a 5% Note payable to USDA Rural Development maturing in 2018; and (c) a 5.25% Note payable to USDA Rural Development maturing in 2034.

"Project Consultant" means \_\_\_\_\_, \_\_\_\_\_, Arkansas.

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

"Redemption Schedule" means the following schedule for redeeming this Bond on the Redemption Date set forth in the following schedule at the Redemption Price (expressed as percentages of the Principal Amount) together with accrued interest to the Redemption Date:

<u>Redemption Date</u> <u>(Date Inclusive)</u>	<u>Redemption Price</u>
_____ 1, 2010 and any Payment Date thereafter	100%

"System" means the Water and Sewer System operated by the Issuer or an entity authorized by Issuer to do so.

"Trustee" means: \_\_\_\_\_ Bank  
\_\_\_\_\_  
\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the Issuer, for value received, hereby promises to pay, by check or draft, to the order of Arkansas Natural Resources Commission or registered assigns (collectively, the "Registered Owner"), at the principal office of the Trustee, the Principal Amount with interest thereon, at the Interest Rate per annum shown above, in such coin or currency from the Dated Date hereof, payable as provided in the Payment Schedule until payment in full of such Principal Amount or, if this Bond or a portion thereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent allowed by law) at the rate borne by this Bond. The Payments

made by Issuer shall be first applied to accrued interest at the Interest Rate set forth herein and the balance thereof shall be applied to principal. Payment shall be made to the person in whose name this Bond is registered on the registration books of the Issuer maintained by the Trustee at the close of business on the Record Date, irrespective of any transfer or exchange of this Bond, subsequent to the Record Date and prior to such Payment Date.

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

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

This Bond is not a general obligation of the Issuer, but is a special obligation of the Issuer payable solely from receipts received from the operation of the System (the "Revenues"). This Bond is secured by a statutory mortgage lien upon the System subject to the terms of the Issuer's Authorizing Action and also a pledge by the Issuer of the Revenues pursuant to the provisions of the Act in favor of the Registered Owner of the Bond. The pledge of revenues in favor of the Bond is subordinate to the pledge in favor of the Prior issues.

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

The Bond is subject to mandatory redemption at par plus accrued interest from bond proceeds not used to pay the cost of the Improvements on the first Payment Date following the date of the Project Consultant's completion certificate, and to redemption at the option of the Issuer, pursuant to the Redemption Schedule.

Notice of redemption identifying portions of the Bond to be redeemed shall be given by the Trustee, not less than fifteen (15) days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to the Registered Owner of the Bond to be redeemed.

In the event of a partial redemption, prepayments shall be applied in inverse order of maturity, and length of the payment schedule shall be reduced accordingly and the amount due on each Payment Date shall not be reduced.

The Issuer has fixed and has covenanted and agreed to maintain rates for the services of the System which shall be sufficient at all times to provide for the proper and reasonable expenses of operation and maintenance of the System and for the payment of the principal of and interest on the Bond of this issue, including Trustee's fees, if any, as the same become due and payable, to maintain any required debt service reserves, and to make the required deposit for the depreciation of the System.

This Bond is transferable by the Registered Owner hereof only as provided in the Issuer's Authorizing Action. The Issuer and the Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of principal and interest due hereon and for all other purposes, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Issuer's Authorizing Action until it shall have been authenticated by execution of the Certificate of Authentication hereon duly signed by the Trustee. This Bond is issued with the intent that the laws of the State of Arkansas shall govern its construction.

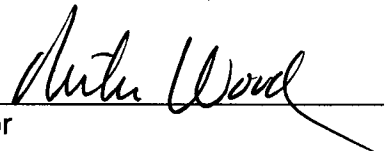
IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed under the Constitution and laws of the State of Arkansas, precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by this Bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that the Revenues have been pledged in accordance with the Act sufficient to pay the Bond and interest thereon until all of the Bond and interest thereon have been fully paid and discharged.

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

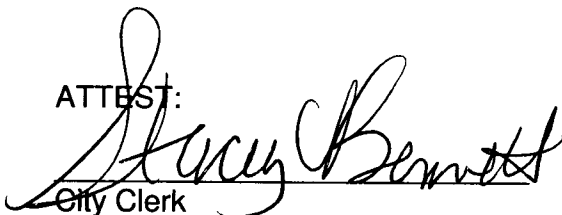
CITY OF CHERRY VALLEY, ARKANSAS

By:

Mayor



ATTEST:

  
City Clerk



TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is issued under the provisions of the within mentioned Issuer's Authorizing Action.

**TRUSTEE:**

\_\_\_\_\_ BANK  
Corporate Trust Administrator

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

By: \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_, Arkansas ("Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as attorney to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

Date: \_\_\_\_\_

Transferor: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company.

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

Section 7. (a) The Issuer hereby expressly pledges, mortgages and appropriates to the Trustee all of the receipts received from the operation of the System (the "Revenues") after the adoption hereof, to secure the equal and ratable payment of the principal of and interest on the Bond when due at maturity or at redemption prior to maturity, the payment of the fees and charges of the Trustee, and as security for the performance of all other obligations of the Issuer hereunder; and the Bond is hereby secured by the lien of such pledge; and the Revenues shall be used for no other purpose than to pay the principal of and interest on the Bond and Trustee's fees, except as otherwise specifically provided herein. The Bond and interest thereon shall not constitute an indebtedness of the Issuer within any constitutional or statutory limitation. The Bond is not a general obligation of the Issuer, but is a special obligation of the Issuer payable solely from Revenues. Nothing herein shall be construed as requiring the Issuer to use any funds or revenues from any sources other than the Revenues for the payment of the Bond, but nothing herein shall be construed as prohibiting the Issuer from doing so.

The Bond is hereby further secured by a statutory mortgage lien upon the System which exists pursuant to the provisions of Arkansas Code of 1987 Annotated §14-234-208; §14-235-223; §14-164-412, and applicable decisions of the Supreme Court of the State of Arkansas, including *City of Harrison v. Braswell*, 209 Ark. 1094, 194 S.W.2d 12 (1946), in favor of the Registered Owner of the Bond, and the System is hereby mortgaged to the Trustee as security for the equal and ratable payment of the principal and interest on the Bond and as security for the performance of all other obligations of the Issuer hereunder.

(b) The Issuer, and the officers and employees of the Issuer shall execute, perform and carry out the terms of this pledge in strict conformity with the provisions of the Issuer's Authorizing Action.

Section 8. All Revenues derived from the operation of the System, including any improvements hereafter at any time constructed, shall be paid as and when received into a special fund, in the name of the Issuer, heretofore designated the Revenue Fund. All monies at any time in the Revenue Fund shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on the Bond of this issue, the Prior Issues, and bonds subsequently issued secured by Revenues (collectively, "System Bonds"), to the maintenance of the Depreciation Fund as herein required, to the maintenance of any required debt service reserves at the required levels, to the payment of the Trustee's fees and otherwise as described herein.

Section 9. (a) There is hereby established and created with the Trustee, a trust fund of and in the name of the Issuer which is designated the Bond Fund. Monies in the Bond Fund shall be used in the following order of priority as and when necessary solely for the following purposes:

- (1) to pay the Trustee's fees and expenses; and
- (2) to pay principal and interest on the Bond.

(b) The Bond is issued with a maturity of approximately 30 years.

(c) After making the required monthly deposit into the Operation and Maintenance Fund to pay the reasonable and necessary expenses of operation, repair and maintenance of the System for such month and after making the monthly transfers with respect to the Prior Issues, there shall be paid from the Revenue Fund into the Bond Fund, beginning on the first business day of the month following the month of the Date of Issue, and continuing on or before the first business day of each month thereafter until all of the outstanding debt of this Bond issue with interest thereon has been paid in full, or provision made for such payment, a sum equal to (i) one-sixth ( $1/6$ ) of the installment of principal and interest on the bond next due, plus (ii) an amount sufficient to provide for Trustee's fees and (iii) any sum necessary to pay the Rebate Amount, if any; provided, however, that deposits into the Bond Fund through the month prior to the first Payment Date shall be adjusted as necessary so that approximately level payments are made during that period in order to pay the first installment of principal and interest.

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

(e) When the monies held in the Bond Fund shall be and remain sufficient to pay the principal of and interest on all of the Bond then outstanding, and Trustee's fees in connection therewith and the Rebate Amount, if any, there shall be no obligation to make further payments into the Bond Fund.

(f) If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments during the succeeding twelve months on all of the outstanding Bond, with Trustee's fees, and all payments of the Rebate Amount, if any, due in the succeeding twelve months, such surplus may be applied to the payment of the principal of the Bond that may be called for redemption prior to maturity. All monies deposited in the Bond Fund shall be expended within a thirteen-month period beginning on the date of deposit, and any amount required from investment of money held in the Bond Fund shall be expended within one (1) year from the date of receipt and in any event all money in the Bond Fund in excess of a carryover amount not to exceed the greater of (A) one year's earnings on the Bond Fund, or (B) one-twelfth ( $1/12$ ) of the annual debt service on the Bond, shall be depleted at least once a year as provided in this Section or by transfer to the Revenue Fund.

(g) In addition to other security pledged herein, the Bond shall be specifically secured by a pledge of all monies and Revenues required to be placed into the Bond Fund. The pledge in favor of the Bond is hereby irrevocably made according to the terms hereof, and the Issuer and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions hereof.

(h) When the Bond shall have been paid within the meaning hereof and all payments of the Rebate Amount have been made, if any, the Trustee shall take all appropriate action to cause (i) the pledge and lien hereof to be discharged and cancelled, and (ii) all monies held by it pursuant hereto and which are not required for the payment of such Bond to be paid over or delivered to or at the direction of the Issuer.

Section 10. After making the required payments (i) into the Operation and Maintenance Fund, (ii) with respect to the Prior Issues, and (iii) into the Bond Fund, there shall be paid from the Revenue Fund into a fund heretofore designated the Depreciation Fund, on the first business day of the month in which the first payment to the Bond Fund is made pursuant to Section 9 hereof and continuing on the first business day of each month thereafter while any of the Bond is outstanding, three percent (3%) of the gross revenues of the System for the preceding month. The monies in the Depreciation Fund shall be used solely for the purpose of paying the cost of maintenance or repairs, renewals or replacements, the cost of acquiring, installing or repairing equipment, the cost of enlarging, extending, reconstructing or improving the System or any part thereof, engineering expenses related to the foregoing, the cost of acquiring any lands, rights in land, easements or franchises deemed by the Issuer to be necessary or useful in connection with the ownership or operation of the System, or premiums on insurance carried under the provisions hereof; provided, however, in the event that no other funds are available therefor, the monies 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 Bond or the Prior Issues, as they mature or payment of the Rebate Amount, if any.

If in any fiscal year a surplus shall be accumulated in the Depreciation Fund over and above the amount necessary to defray the cost of the probable replacements during the current fiscal year, and the next ensuing fiscal year, such surplus shall be transferred and paid into the Revenue Fund.

Section 11. Any surplus in the Revenue Fund after making all disbursements and providing for all Funds described above may be used, at the option of the Issuer, for the redemption of the Bond, the Prior Issues, and other System Bonds, prior to maturity in accordance with their respective redemption provisions; for extensions, betterments and improvements to the System; or for any other lawful government purpose authorized by the Issuer.

Section 12. (a) When the Bond herein authorized to be executed has been executed by the Authorized Officers and the seal of the Issuer impressed as herein provided, it shall be delivered to the Trustee, which shall authenticate it and deliver it to the Arkansas

Natural Resources Commission upon payment of the Aggregate Principal Amount plus accrued interest from the Date of Issue to the date of delivery ("total sale proceeds"). The accrued interest shall be deposited in the Bond Fund, and thereafter the total sales proceeds shall be deposited in a special account of the Issuer hereby created and designated the Construction Fund with the Trustee. From the Construction Fund, the Trustee's fee shall be paid to the Trustee and the fee to ANRC described in Section 4 hereof shall be paid.

(b) The monies in the Construction Fund shall be used for accomplishing the Improvements, paying expenses incidental thereto and paying expenses of issuing the Bond, with any unexpended balance to be deposited in the Bond Fund. Disbursement shall be made from the Construction Fund on the basis of consecutively numbered written requisitions which shall specify: the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; the purpose of the payment; and that the payment is a proper charge on the Construction Fund. Each requisition must be signed by an agent of the ANRC, and an Authorized Officer and the Project Consultant and the check drawn upon the Construction Fund shall be payable to the person, firm or corporation designated in the requisition. The Trustee shall be required to keep records of all requisitions reflecting all payments made from the Construction Fund.

(c) When the Improvements have been completed and all required expenses paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof, this fact shall be evidenced by a certificate signed by an Authorized Officer and the Project Consultant which certificate shall state, among other things, the date of the completion and that all obligations payable from the Construction Fund have been discharged (the "Completion Certificate"). A copy of the Completion Certificate shall be filed with the Trustee and upon receipt thereof the Trustee shall transfer any remaining balance to the Bond Fund.

Section 13. (a) Monies held for the credit of the Revenue Fund, the Operation and Maintenance Fund, the Bond Fund, the Depreciation Fund, and the Construction Fund, shall to the extent practicable, be invested and reinvested pursuant to the direction of the Issuer, and in the case of the Bond Fund and the Construction Fund, in the Trustee's discretion in the absence of any direct instructions from the Issuer, in Government Securities (which for purposes hereof are hereby defined to mean direct or fully guaranteed obligations of the United States of America), in certificates of deposit of banks, including the Trustee, which are insured by the FDIC, or, if in excess of \$250,000, are collateralized by Government Securities, or other investments as may, from time to time, be permitted by law and approved by the ANRC, which shall mature, or which investments shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

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

(c) Monies so invested in Government Securities or certificates of deposit of banks to the extent insured by FDIC need not be secured by the depository bank or banks.

Except as set forth in the preceding sentence, all deposits of Revenues shall be collateralized by the pledge of Government Securities in such manner as to be perfected against the claims of innocent creditors under the Financial Institution Reform, Recovery and Enforcement Act of 1989 and the Arkansas Uniform Commercial Code.

(d) In determining the value of the Bond Fund, the Trustee shall credit investments at the market value thereof, as determined by the Trustee by any method selected by the Trustee in its reasonable discretion. No less frequently than annually, and in any event on December 31 each year, the Trustee shall determine the value of each such fund and shall report such determination to the Issuer and ANRC. The Trustee shall sell or present for redemption any investments as necessary to provide money for the purpose of making any payment required hereunder. To the extent that any loss or reduction in value reduces the value of any such fund to a level lower than the level required hereunder, such loss or reduction shall be made up in each fund in the priority established herein for payments from the Revenue Fund. The Trustee shall not be liable for any loss resulting from any such sale.

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

(b) The Bond shall be deemed paid when (1) there has been deposited with the Trustee an amount sufficient to pay the principal or redemption price of and interest on the Bond to the date of maturity or redemption, plus all fees of the trustee and the Rebate Amount, if any, or (2) there has been deposited with the Trustee, Government Securities (as defined herein) that mature according to their terms and are non-callable or redeemable at the option of the holder thereof on or prior to the date of maturity or redemption of the Bond and the principal or redemption price of and interest on which, together with any monies on deposit with the trustee, will provide an amount sufficient to pay in full the principal or redemption price of any interest on the Bond when due plus all fees of the Trustee and the Rebate Amount, if any; provided that such deposit shall not affect the tax-exempt status of the interest on the Bond or cause the Bond to be classified as an arbitrage bond within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and provided further, that if such Bond is to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given as provided in the Bond Form. If the Bond is called for redemption and funds are duly provided in accordance with this Ordinance prior to the date fixed for redemption, the Bond will cease to bear interest on such redemption date.

Prepayment of less than all outstanding principal shall be applied in inverse order of maturity.

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

(d) On the payment of all the Bond within the meaning hereof, the Trustee shall hold in trust, for the benefit of the Registered Owner, all such money and/or Government Securities.

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

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

(a) The Issuer covenants and agrees that the rates charged for services of the System heretofore fixed and established are not less than the minimum necessary to produce and will hereafter produce, and shall be maintained in amounts necessary to produce, total Revenues at all times at least sufficient to: pay operation and maintenance expenses of the System; maintain any required debt service reserves in the required amount; pay the principal of and interest on outstanding System Bonds as the same become due; pay the fees of the Trustee and the Rebate Amount, if any, and to make the required deposits into the Depreciation Fund. The Issuer further covenants that the rates shall never be reduced while the Bond is outstanding unless (1) there is obtained from an independent certified public accountant a certificate that the net revenues of the System that will be derived from the proposed new rates, based upon the previous twelve months of consumption, will be sufficient in amount for making the required deposit into the Depreciation Fund and for maintenance of any required debt service reserves in the required amounts, and leave a balance equal to at least 120% of the average annual principal and interest requirements on all outstanding System Bonds and (2) the Issuer is not in default hereunder. The Issuer further covenants and agrees that the rates shall be maintained in such manner as will provide net revenues at least sufficient to provide the required deposits into the Depreciation Fund, and to leave a balance amount equal to not less than 120% of the average annual principal and interest requirements for all System Bonds. The term "net revenues" as used in this Section, means all Revenues, less the expenses of operation and maintenance of the System, including all expense items properly attributable to the operation and maintenance of the System determined in accordance with generally accepted accounting principles applicable to government owned facilities similar to the System, excluding depreciation and debt service expenses.

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



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

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

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

(f) The Issuer covenants and agrees that it will not issue any bonds, or incur any obligation, either (i) secured by a prior lien on or pledge of the Revenues or (ii) on a parity of security with the Bond, except the Issuer reserves the right to issue additional bonds to finance or pay the cost of constructing any future extensions, betterments or improvements to the System, but the Issuer shall not authorize or issue any such additional bonds ranking on a parity with the Bond of this issue unless and until there have been procured and filed with the Issuer and the Trustee a statement by an independent certified public accountant not in the regular employ of the Issuer reciting the opinion, based upon necessary investigation, that the net revenues of the System for the fiscal year immediately preceding

the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 120% of the maximum annual principal and interest requirements on all the then outstanding System Bonds and the additional bonds then proposed to be issued. For the purposes of the computation required by this Section, if, prior to the issuance of the additional bonds and subsequent to the first day of such preceding fiscal year, the Issuer shall have increased its rates or charges imposed for services of the System, there may be added to the net revenues of such fiscal year the additional net revenues which would have been received from the operation of the System during such fiscal year had such increase been in effect throughout such fiscal year, as reflected by a certificate of a duly qualified consulting engineer not in the regular employ of the Issuer.

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

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

(i) The Issuer covenants that the Trustee and the Registered Owner of the Bond shall have the protection of the provisions of Arkansas Code of 1987 Annotated §14-234-208, and that the Issuer will diligently proceed to enforce the lien of unpaid water charges against the premises served by the System and to collect the amount due together with the penalty and expenses thereby. And, if the Issuer shall fail to proceed within thirty (30) days after written request shall have been filed by the Trustee, the Trustee may, and upon the written request of the Registered Owner of not less than 10% of the principal amount of the Bond shall, proceed to enforce such lien in accordance with and pursuant to the authorization thereof.

Section 16. The Issuer shall cause proper books of accounts and records to be kept (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the operation of the System, and such books shall be available for inspection by the Registered Owner of the Bond at reasonable times and under reasonable circumstances. The Issuer agrees to provide the Registered Owner with an annual financial statement for the System no later than 60 days after the end of the year. In addition, the Issuer agrees to have the System's records audited by an independent certified public accountant at least once each year, and a copy of the audit shall be delivered to the Registered Owner no later than 120 days after the end of the year. In the event the Issuer fails or refuses to make the report, the Registered Owner may have the audit made, and the cost thereof shall be charged against the Revenue Fund.

Section 17. All Revenues received by any agent of the Issuer shall be deposited in such depository or depositories for the Issuer as may be lawfully designated by Issuer from time to time; subject, however, to the giving of security as now or as hereafter may be required by law, and provided that such depositories are members of FDIC. The officer having custody of the Issuer's other funds shall be custodian of the Revenues. Payments from the respective Funds shall be made by checks or vouchers, signed by the agent designated by the Authorized Officers and drawn on the depository. Any agent receiving Revenues shall give bond in at least the amount of total funds in his custody at any one time. Each such check or voucher shall briefly specify the purpose of the expenditure.

Section 18. (a) If there be any default in the payment of the principal of and interest on the Bond, or if the Issuer defaults in the performance of any covenant contained herein, the Trustee or the Registered Owner of a majority in the principal amount of the Bond then outstanding may, by proper suit, compel the performance of the duties of the officials of the Issuer hereunder and under the Constitution and laws of the State of Arkansas, and may take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State of Arkansas, including an action for the appointment of a receiver to administer the System on behalf of the Issuer and the Registered Owner with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, maintenance and repair of the System, and to pay the Bond and interest outstanding and to apply the Revenues in conformity herewith and with the laws of Arkansas. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the Issuer.

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

(c) No delay or omission of the Trustee or of any Registered Owner to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given hereby to the Trustee and to the Registered Owner, respectively, may be exercised from time to time and as often as may be deemed expedient.

(d) The Trustee may, and upon the written request of the Registered Owner of the Bond shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions hereof 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.

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

Section 19. In the event this body or the office of the Authorized Officers shall be abolished or any offices shall be merged or consolidated or in the event the duties of a particular office shall be transferred to another office or offices, 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 Issuer or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officers succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 20. The Trustee shall be responsible for the exercise of good faith and ordinary prudence in the execution of its respective trusts. The recitals herein and in the face of the Bond are the recitals of the Issuer and not of the Trustee.

The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing, by the Registered Owner of the Bond and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by thirty (30) days' notice in writing to the Authorized Officers and the Registered Owner, and the Registered Owner of the outstanding Bond at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the Registered Owner of the outstanding Bond may appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the Authorized Officers. If the Registered Owner of the outstanding Bond shall fail to fill a vacancy after the same shall occur, then the Issuer shall forthwith designate a new Trustee by a written instrument filed in the office of the Issuer. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it hereby, but only upon the terms and conditions set forth herein and subject to the provisions hereof, to all of which the Registered Owner, by accepting delivery of the Bond, agrees. Such written acceptance shall be filed with the Authorized Officers. Any successor Trustee shall have all the powers herein granted to the original Trustee.

Section 21. (a) The terms hereof shall constitute a contract between the Issuer and the Registered Owner and no variation or change in the undertaking herein set forth shall be made while any of the Bond is outstanding, except as hereinafter set forth in subsection (b) and, subject to the provisions of Section 18 hereof, a Registered Owner may at any time for and on his own behalf or for and on behalf of any bondholders enforce the obligations of the Issuer by a proper suit for that purpose.

(b) The Trustee may from time to time, and at any time consent to any amendment, change or modification hereof or the adoption of any supplement thereto for the purpose of curing any ambiguity or formal defect or omission, or implementing any of the provisions hereof, provided, however, that the Trustee shall not consent to any other amendment, change or modification hereof or to the adoption of any supplement thereto without the approval or consent of the holders of not less than seventy-five percent (75%) in Aggregate Principal Amount of the Bond then outstanding, and; provided further, that nothing herein contained shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or (3) the creation of a pledge of Revenues superior to the pledge created hereby, or (4) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (5) a reduction in the Aggregate Principal Amount of the Bond required for consent to such supplemental ordinance.

Section 22. (a) The Issuer covenants with the Registered Owner, who otherwise might qualify by law to treat interest on the Bond as tax-exempt, that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Bond to be subject to federal income taxation pursuant to existing laws at the time of issuance; and it shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest payable on the Bond shall be exempt from federal income taxation pursuant to existing laws at the time of issuance. Without limiting the generality of the foregoing, the Issuer covenants that the proceeds of the sale of the Bond will not be used directly or indirectly in such manner as to cause the Bond to be treated as an "Arbitrage Bond" within the meaning of Section 148 of the Code.

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

(c) The Issuer represents and covenants that it will take no action which would cause the Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code; specifically, (i) the payment of any portion of principal or interest with respect to the Bond will not be guaranteed (directly or indirectly) by the United States or any agency or instrumentality thereof, (ii) none of the proceeds of the Bond will be used in making loans, the payment of any portion of the principal or interest, with respect to which are to be guaranteed by the United States or any agency or instrumentality thereof, and (iii) none of the proceeds of the Bond (exclusive of proceeds invested for an initial temporary period until needed for the purpose of which the Bond was issued and proceeds deposited into

they Bond Fund will be invested (directly or indirectly) in federally insured deposits or accounts. Nothing in this Section prohibits investments in bonds issued by the United States Treasury.

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

(e) The Issuer agrees to make all filings with the Internal Revenue Service (specifically including Form 8038-G) that are required from time to time and to comply with the provisions of the Rebate Agreement, if applicable in order to assure that the Bond is and remains obligations on which the interest is excluded from gross income of the holder under Section 103(a) of the Code.

(f) Neither the Issuer nor any related person (as defined in Section 147(a) (2) of the Code) shall acquire any portion of the Bond or the general obligation bonds issued by the Registered Owner in order to provide loans to finance the Improvements.

(g) This Ordinance shall be considered an "official intent" within the meaning of United States Treasury Regulation No. 1-150-2.

Section 23. The provisions hereof are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder hereof.

Section 24. This instrument shall not create, nor shall any right of any kind arise hereunder, until the Bond shall be issued and delivered, except as and to the extent necessary to collect the Revenues.

Section 25. All actions, ordinance and resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 26. It is hereby ascertained and declared that the Improvements must be accomplished as soon as possible in order to make the System adequate for the needs of the users thereof and the Issuer, without which the life, health, safety and welfare thereof are jeopardized, and that the issuance of the Bond and the taking of the other action authorized hereby is necessary for the accomplishment thereof. It is, therefore, declared that an emergency exists and this instrument, 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.

ADOPTED this 14th day of September, 2010.

CITY OF CHERRY VALLEY, ARKANSAS

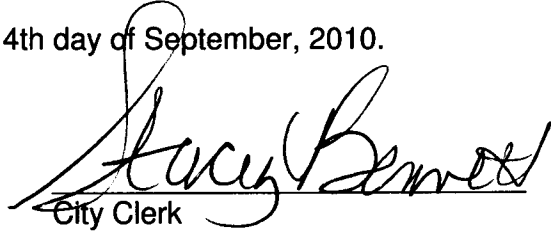
By:   
Mayor

ATTEST:  
  
City Clerk

CERTIFICATE

The undersigned hereby certifies that the foregoing pages are a true and correct copy of an Ordinance, adopted at the regular session of the City Council of the City of Cherry Valley, Arkansas, held at the regular meeting place on the 14th day of September, 2010, and recorded in Book No. 2, Page 13, now in my possession.

Given under my hand and seal this 14th day of September, 2010.

  
City Clerk