

ORDINANCE NO. 79

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A WATER AND SEWER REVENUE BOND, SERIES 1993, IN THE PRINCIPAL AMOUNT OF \$578,000, FOR THE PURPOSE OF PROVIDING FOR THE CONSTRUCTION OF BETTERMENTS AND IMPROVEMENTS TO THE WATER AND SEWER SYSTEMS FOR THE CITY OF CHERRY VALLEY, ARKANSAS, PROVIDING FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON THE BOND; DESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Cherry Valley, Arkansas (herein sometimes referred to as "Council") has previously determined that there is an immediate need to provide for the construction of betterments and improvements to the water and sewer systems for the City, and has caused to be filed with the City Recorder by a duly qualified engineer, chosen by the Council, plans and specifications and an estimate of the cost of constructing the improvements; and

WHEREAS, according to the above-mentioned estimate, the cost of constructing facilities to provide for the construction of betterments and improvements to the water and sewer systems, exclusive of funds from federal and state grants, will be the sum of approximately \$578,000, including engineering, legal costs, and other expenses incidental to the issuance of the bond hereinafter authorized, which report has been previously examined and approved by the City Council; and

WHEREAS, it is necessary to defray a portion of the cost of the construction of these betterments and improvements, as above recited, by obtaining a loan made, or insured, by the United States

of America in accordance with the applicable provisions of the Consolidated Farm and Rural Development Act of 1972, it being determined that the City of Cherry Valley is unable to obtain sufficient credit elsewhere to finance the construction of betterments and improvements to the water and sewer systems, taking into consideration prevailing private and comparative rates and terms currently available; and

WHEREAS, the City has outstanding its Water and Sewer Revenue Bonds, dated January 1, 1971 (the "1971 Bonds"), authorized by Ordinance No. 59, adopted and approved February 22, 1971 (the "1971 Ordinance"); and

WHEREAS, the City has outstanding its Water and Sewer Revenue Bonds (the "1979 Bonds"), authorized by Ordinance No. 64, adopted and approved September 24, 1979 (the "1979 Ordinance"); and

WHEREAS, the 1971 and 1979 Bonds will be collectively referred to herein as the "bonds of prior issues;" 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 \$578,000 in principal amount of Water and Sewer Revenue Bonds, at an interest rate of 5.625% per annum; and

WHEREAS, the City is authorized under Act 131 of the Acts of the General Assembly of Arkansas of the year 1933, as amended, and Act 132 of the Acts of the General Assembly of Arkansas of the year 1933, as amended, to issue and sell revenue bonds for the purpose of financing in part the cost of constructing betterments and

improvements to the water and sewer systems, including printing, legal and other expenses incident to the issuance of the bond; and

WHEREAS, to secure funds necessary to finance the construction of betterments and improvements to the water and sewer systems and the engineering, legal and other costs incidental to the issuance of the bond for these purposes, the Council has determined to issue the water and sewer revenue bond hereinafter authorized, to be payable solely from the net revenues of the water and sewer systems;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Cherry Valley, ARKANSAS:

Section 1. That the betterments and improvements to the water and sewer systems be constructed in accordance with the plans herebefore referred to, and for defraying a portion of the costs thereof, to obtain such financial assistance as is available by loan, made or insured by the United States of America, acting by and through the Farmers Home Administration, United States Department of Agriculture.

Section 2. That the City Council hereby finds and declares that the period of usefulness of the water and sewer systems after completion will be more than forty (40) years.

Section 3. That under the authority of Act 131 of 1933, as amended, (Arkansas Code Annotated §§ 14-234-201, et seq.) and Act 132 of 1933, as amended (Arkansas Code Annotated §§ 14-235-201, et seq.), and applicable decisions of the Arkansas Supreme Court, including particularly City of Harrison v. Braswell, 209 Ark. 1094,

194 S.W. 2d 12 (1946), the City of Cherry Valley is hereby authorized to borrow the sum of Five Hundred Seventy-Eight Thousand Dollars (\$578,000) from the United States of America, acting through the Farmers Home Administration, and issue as evidence therefor a "Water and Sewer Revenue Bond, Series 1993" in the principal amount of \$578,000. The bond shall bear interest at the rate of five and six hundred twenty-five hundredths percent (5.625%) per annum, with interest only for the first year payable on the twelfth monthly anniversary from the date of the bond, and with principal and interest payable in monthly amortized installments commencing on the thirteenth monthly anniversary from the date of the bond, and monthly thereafter, until the face amount of the bond, plus interest thereon, is fully paid, except that the final payment of the entire indebtedness, if not paid sooner, shall be due and payable forty (40) years from the date of the bond. If interim certificates, as hereinafter authorized, are issued to the purchaser of the bond, the bond shall be dated as of the date of delivery of the first interim certificate, otherwise, the bond shall be dated as of the date of its delivery. The bond shall be issued in fully registered form without interest coupons; shall be registered as to principal and interest by the City Recorder in a bond registration book, and a certificate of such registration shall be endorsed on the bond. Thereafter, both the principal and interest shall be payable to the registered owner at his address appearing on the bond registration book.

The bond, together with the interest thereon, shall be payable solely from the income and revenue to be derived from the operation of the water and sewer systems, shall be a valid claim of the holder thereof only against said funds, a sufficient portion of which is hereby pledged and mortgaged for the payment of the bond, and shall be used for no other purpose, except as hereinafter set out, and the bond shall be additionally secured by a statutory mortgage lien on the improvements, betterments and extensions to the water and sewer systems. The bond shall contain a recital that it is issued pursuant to Act No. 131 of the General Assembly of Arkansas of the year 1933, as amended, and Act 132 of the General Assembly of Arkansas of the year 1933, as amended.

Pending the preparation and delivery of the permanent and definitive bond hereinabove authorized, interim certificates of indebtedness, in the aggregate principal amount of the bond, may be issued for the purpose of providing construction funds immediately and in anticipation of the issuance of such permanent and definitive bond. The interim certificates shall be in such denomination as the City Council shall determine, be dated the day of delivery, bear interest at the bond rate, or if issued to evidence a loan of construction funds obtained on an interim basis, at such loan rate, and be payable within three years from their date. Upon delivery of the permanent and definitive bond, interim certificates, to the extent then outstanding, with accrued interest, shall be exchanged for, or paid from the proceeds of, the permanent and definitive bond.

Section 4. The bond and interim certificates shall be signed by the Mayor and City Recorder and sealed with the corporate seal of the City and be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF CROSS
CITY OF CHERRY VALLEY

\$578,000

5.625% WATER AND SEWER REVENUE BOND, SERIES 1993

KNOW ALL MEN BY THESE PRESENTS:

That the City of Cherry Valley (hereinafter called the "City"), in the County of Cross, and State of Arkansas, hereby acknowledges itself to owe, and for value received, promises to pay to the registered owner hereof, but solely from the special fund provided therefor as hereinafter set forth, the principal sum of

FIVE HUNDRED SEVENTY-EIGHT THOUSAND DOLLARS

(\$578,000)

plus interest on the unpaid balance at the rate of 5.625% per annum. Interest only is payable for the first year, on the twelfth month anniversary following loan closing. Principal and interest shall be payable in equal consecutive monthly amortized payments of principal and interest of \$3,025 on the ___ day of _____, 19__, and monthly thereafter until principal and interest are fully paid, except that the final installments on the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable forty (40) years from the date of this bond. This bond shall be registered as to principal and interest in a bond registration book, such registration to be noted on the back hereof and no transfer shall be valid unless made on the bond registration book and similarly noted on the back hereof. Thereafter both the principal and interest shall be payable in lawful money of the

United States of America to such registered owner at his address appearing on the bond registration book.

This bond is issued for the purpose of aiding in the construction and installation of betterments and improvements to the water and sewer systems to serve the City of Cherry Valley, Arkansas, 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 regular session of the General Assembly of the State of Arkansas of the year 1933, as amended, and Act 132 of the regular session of the General Assembly of the State of Arkansas of the year 1933, as amended, and applicable decisions of the Arkansas Supreme Court, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), and pursuant to Ordinances and proceedings of the City Council duly passed, and does not constitute an indebtedness of the City within any constitutional or statutory limitations.

Both principal and interest on this bond are payable solely from a fixed amount of the net revenues from the water and sewer systems, which amount shall be sufficient to pay the principal of and interest on the bond as the same becomes due and payable. This amount has been duly set aside and pledged as a special fund for that purpose and identified as the "Water and Sewer Revenue Fund" created pursuant to Section 11 of Ordinance No. 59 of the City adopted and approved on February 22, 1971, which was the Ordinance authorizing the issuance of a series of the City's \$131,900 Water and Sewer Revenue Bonds. The City of Cherry Valley has fixed and

covenanted and agreed to maintain rates to be charged for the use of and services rendered by the water and sewer systems, which rates shall be sufficient at all times to provide for the payment of the principal of and interest on all the outstanding bonds and this bond as the same become due and payable, to provide and maintain a reserve for contingencies, to provide for adequate depreciation for necessary replacement and repairs to the system, and to provide for the payment of the reasonable expenses of operation and maintenance of the system.

This bond is expressly negotiable under Act 131, as amended, and Act 132, as amended, and is issued with the intent that the laws of the State of Arkansas shall govern the construction thereof.

By virtue of the authority of Act 131 of the General Assembly of the State of Arkansas for the year 1933, as amended, there is granted and created a statutory mortgage lien on the betterments and improvements to the water and sewer systems constructed with the proceeds derived from the sale of the bond to and in favor of the holder of the bond and the water and sewer systems shall remain subject to the statutory mortgage lien until the payment in full of all of the bond, both principal and interest, shall have been made.

This lien is second in priority to the liens granted by the following Ordinances of the City:

<u>Ordinance</u>	<u>Date of Passage</u>	<u>Original Principal Amount of Bonds Secured</u>	<u>Final Maturity Date</u>
No. 59	February 22, 1971	\$131,900	2011
No. 64	September 24, 1979	\$160,000	2019

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the City. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this bond and shall not affect the obligation of the City to pay the remaining installments as scheduled herein.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all conditions and things required by the Constitution and laws of the State of Arkansas to exist, happen, and be performed pursuant 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, and that sufficient of the income and revenue which is deemed to be derived from the operation of the water and sewer systems has been pledged to and will be set aside into the special fund for the payment of the principal of and interest on this bond; and that the indebtedness represented by this bond and the issue of which it forms a part, do not exceed any constitutional or statutory limitations.

IN WITNESS WHEREOF, the City of Cherry Valley, Arkansas, by its City Council, has caused this bond to be signed by the Mayor and City Recorder hereof and sealed with the corporate seal of the City, all as of the 14th day of Sept., 1993.

CITY OF CHERRY VALLEY, ARKANSAS

By Nike Wood
Mayor

ATTEST:

Leana Meredith
City Recorder

There shall be printed on the reverse of the bond a registration certificate in substantially the following form: