

ORDINANCE NO. 0-04-06

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER FACILITIES OF THE CITY OF ARKADELPHIA, ARKANSAS; AUTHORIZING THE ISSUANCE OF A WATER AND SEWER REVENUE BOND FOR THE PURPOSE OF FINANCING THE COST OF CONSTRUCTION; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Arkadelphia, Arkansas (the "City") owns and operates a water and sewer system (the "System"); and

WHEREAS, the Board of Directors has determined that extensions, betterments and improvements to the water facilities of the System (the "Improvements") are necessary in order to make the services of the System adequate for the needs of the City; and

WHEREAS, the City has caused to be prepared by Crist Engineering, Inc., a report for the Improvements that has been examined and approved by the Board of Directors and a copy of which report is on file at the offices of the System where it may be inspected by any interested person; and

WHEREAS, the estimated costs of the Improvements, contingencies and bond issuance costs total \$3,428,027; and

WHEREAS, in order to finance a portion of the costs of the Improvements, including bond issuance costs, the City is making arrangements for the sale of a \$2,778,027 principal amount bond to the Arkansas Development Finance Authority, as purchaser (the "Bondholder"), at a price of par for a bond bearing interest at the rate of 2.25% per annum pursuant to a Bond Purchase Agreement (the "Agreement") among the City, the Bondholder and the Arkansas Soil and Water Conservation Commission ("Soil and Water"), which has been presented to and is before this meeting; and

WHEREAS, the City has outstanding a Water and Sewer Revenue Bond, Series 1992 (the "1992 Bond"), authorized by Ordinance No. O-92-3, adopted February 20, 1992, as amended by Ordinance No. O-92-5, adopted April 2, 1992 (collectively, the "1992 Ordinance"); and

WHEREAS, the City has outstanding an issue of Water and Sewer Refunding Revenue Bonds, Series 1996 (the "1996 Bonds"), authorized by Ordinance No. O-96-02, adopted April 18, 1996, as amended by Ordinance No. O-96-04, adopted May 2, 1996 (collectively, the "1996 Ordinance"); and

WHEREAS, the City is authorized, under the provisions of Amendment No. 65 to the Arkansas Constitution, Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Code"), Title 14, Chapter 164, Subchapter 4 of the Code and Title 14, Chapter 235, Subchapter 2 of the Code (collectively, the "Authorizing Legislation"), to issue and sell the bond; and

WHEREAS, the Bondholder intends to pledge the bond as collateral for the payment of its water system revolving loan fund revenue bonds (the "ADFA Bonds"), which may be issued from time to time, to the bank or trust company to be named as trustee for the ADFA Bonds (the "ADFA Trustee"); and

WHEREAS, the City is required to pay to the Arkansas Development Finance Authority, as servicer (the "Authority"), a servicing fee equal to 1% per annum of the outstanding principal amount of the bond (the "Servicing Fee");

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Arkadelphia, Arkansas:

Section 1. The Improvements shall be accomplished and shall be a part of the System.

Section 2. The sale to the Bondholder of up to \$2,778,027 in principal amount of a bond from the City at a price of par for a bond bearing interest at the rate of 2.25% per annum and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby approved and the bond is hereby sold to the Bondholder. The Mayor is hereby authorized and directed to execute and deliver the Agreement on behalf of the City. The Mayor, City Manager and Manager of the System are hereby authorized and directed to take all action required on the part of the City to fulfill its obligations under the Agreement. The Agreement is hereby approved in substantially the form submitted to this meeting with such changes as may be approved by the Mayor, his execution to constitute complete evidence of such approval.

Section 3. The Board of Directors hereby finds and declares that the period of usefulness of the System after completion of the Improvements will be more than 25 years, which is longer than the term of the bond.

Section 4. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly the Authorizing Legislation and applicable decisions of the Supreme Court of the State, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2d 12 (1946), City of Arkadelphia, Arkansas Water and Sewer Revenue Bond, Series 2004 (the "bond") is hereby authorized and ordered issued in the principal amount of

\$2,778,027, the proceeds of the sale of which will be used to finance a portion of the costs of the Improvements, pay expenses incidental thereto, and pay expenses of issuing the bond. The balance of the costs of the Improvements will be paid from available System revenues.

The bond shall bear interest at the rate of 2.25% per annum based upon a 360-day year of twelve consecutive 30-day months. The bond shall be dated the date of delivery to the Bondholder. Interest shall be payable on each April 15 and October 15 after the bond is issued. Principal shall be payable in installments on April 15, 2008 and each April 15 and October 15 thereafter until the unpaid principal is paid in full as follows:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
04/15/08	\$49,851	04/15/18	\$68,815
10/15/08	50,661	10/15/18	69,933
04/15/09	51,484	04/15/19	71,070
10/15/09	52,321	10/15/19	72,225
04/15/10	53,171	04/15/20	73,398
10/15/10	54,035	10/15/20	74,591
04/15/11	54,913	04/15/21	75,803
10/15/11	55,806	10/15/21	77,035
04/15/12	56,712	04/15/22	78,287
10/15/12	57,634	10/15/22	79,559
04/15/13	58,571	04/15/23	80,852
10/15/13	59,523	10/15/23	82,166
04/15/14	60,489	04/15/24	83,501
10/15/14	61,473	10/15/24	84,858
04/15/15	62,471	04/15/25	86,236
10/15/15	63,486	10/15/25	87,639
04/15/16	64,518	04/15/26	89,062
10/15/16	65,566	10/15/26	90,509
04/15/17	66,632	04/15/27	91,981
10/15/17	67,715	10/15/27	93,475

The bond will be registered as to both principal and interest, payable to the Bondholder, or registered assigns, as set forth hereinafter in the bond form, and shall be numbered R-1.

Payment of principal and interest shall be by check or draft mailed to the Bondholder at its address shown on the bond registration books of the City which shall be maintained by the City Clerk as Bond Registrar, without presentation or surrender of the bond (except upon final payment) and such payments shall discharge the obligation of the City to the extent thereof. The City Clerk shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the bond have been fully paid, it shall be canceled and delivered to the City Clerk.

Section 5. The bond shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City. The bond is not a general obligation of the City but is a special obligation, the principal of and interest on which, and Servicing Fee in connection therewith, are secured by a pledge of and are payable from revenues derived from the System ("Revenues"). The pledge of Revenues is subordinate to the pledge in favor of the 1992 Bond and the 1996 Bonds (collectively, the "Prior Bonds"). The bond and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. The bond shall be in substantially the following form and the Mayor and City Clerk are hereby authorized and directed to make all the recitals contained therein:

(form of single registered bond)

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF CLARK
CITY OF ARKADELPHIA
2.25% WATER AND SEWER REVENUE BOND, SERIES 2004

No. R-1

\$2,778,027

KNOW ALL MEN BY THESE PRESENTS:

That the City of Arkadelphia, Clark County, Arkansas (the "City"), for value received, hereby acknowledges itself to owe and promises to pay to the Arkansas Development Finance Authority, or registered assigns, solely from the special fund provided as hereinafter set forth, the principal sum of

TWO MILLION SEVEN HUNDRED SEVENTY-EIGHT THOUSAND
TWENTY-SEVEN DOLLARS
(or the total principal amount outstanding as reflected
by the Record of Payment of Advances attached hereto)

with interest on the unpaid balance of the total principal amount at the rate of 2.25% per annum from the date of each advance. 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 on the unpaid balance of the total principal amount shall be payable on October 15, 2004 and on each April 15 and October 15 thereafter. Principal shall be payable in installments on April 15, 2008 and on each April 15 and October 15 thereafter until the unpaid principal is paid as follows:

<u>Date</u>	<u>Amount</u>
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(There will be inserted the schedule set forth in Section 4 of this Ordinance.)

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

This bond is issued for the purpose of providing financing of a portion of the costs of constructing extensions, betterments and improvements to the water facilities of the water and sewer system of the City (the "System") and costs of authorizing and issuing this bond, and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 234, Subchapter 2, Title 14, Chapter 164, Subchapter 4, and Title 14, Chapter 235, Subchapter 2, of the Arkansas Code of 1987 Annotated and applicable decisions of the Supreme Court of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2d 12 (1946), and pursuant to Ordinance No. _____ of the City, duly adopted and approved on the 20th day of May, 2004 (the "Authorizing Ordinance"). Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the registered owner of this bond.

This bond may be assigned with the written approval of the Arkansas Soil and Water Conservation Commission (the "Commission"), and in order to effect such assignment the assignor shall promptly notify the City Clerk by registered mail, and the assignee shall surrender this bond along with a written approval of the Commission to the City Clerk for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the City Clerk), prior to such surrender for transfer.

This bond may be prepaid at the option of the City from funds from any source, in whole but not in part, at any time on and after May 1, 2015, at a prepayment price equal to the principal amount outstanding, plus accrued interest to the prepayment date. Notice shall be given of such prepayment to the owner of this bond or registered assigns at least 90 days prior to the prepayment date. Such notice shall be in writing mailed to the address of the owner of this bond or registered assigns at the address as reflected on the bond registration books of the City Clerk.

This bond does not constitute an indebtedness of the City within any constitutional or statutory limitation or provision, and the taxing power of the City is not pledged to the payment of the principal of or interest on this bond. This bond is a special obligation payable solely from the revenues derived from the operation of the System. In this regard, the pledge of System revenues is subordinate to the pledge of System revenues to an issue of Water and Sewer Refunding Revenue Bonds, Series 1996 and a Water and Sewer Revenue Bond, Series 1992, so long as any of such bonds are outstanding. A sufficient amount of System revenues to pay principal and interest has been duly set aside and pledged as a special fund for that purpose, identified as the "ADFA Water Bond Fund," in the Authorizing Ordinance. The City has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all times to at least provide for the payment of the reasonable expenses of operation and maintenance of the System, provide for the payment of the principal of and interest on all the outstanding bonds to which System revenues are pledged as the same become due, to establish and maintain debt service reserves and to provide a depreciation fund, all as set forth in the Authorizing Ordinance.

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

IN WITNESS WHEREOF, the City of Arkadelphia, Arkansas has caused this bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, and its corporate seal to be affixed, all as of the _____ day of _____, 2004.

CITY OF ARKADELPHIA, ARKANSAS

ATTEST:

By _____
Mayor

City Clerk

(SEAL)

[A Registration Certificate and a Record of Payment of Advances shall be attached to the bond.]

Section 7. The City has heretofore fixed sewer rates by Ordinance No. O-92-9, adopted on September 17, 1992, and water rates by Ordinance No. O-01-11, adopted on November 15, 2001. Reference is hereby made to such Ordinances for the details thereof and other provisions pertaining thereto, which water and sewer rates are hereby confirmed and continued as provided therein.

The City covenants and agrees that the rates established will produce gross Revenues at least sufficient to pay monthly operation, maintenance and funded depreciation expenses of the System, pay the principal of and interest on all outstanding bonds to which Revenues are pledged ("System Bonds"), as the same become due, pay the Servicing Fees as the same become due, and create and maintain any required debt service reserves ("Required Payments"). The City covenants always to maintain rates (including increases as necessary) which will provide for the Required Payments. The rates in effect for water service at this time shall not be reduced without the prior written consent of Soil and Water and the Bondholder.

Section 8. All of the provisions of Ordinance No. 331, adopted October 21, 1976, the 1992 Ordinance and the 1996 Ordinance (collectively, the "Prior Ordinances") (including those incorporated by reference but excluding those provisions clearly inapplicable hereto or in direct conflict herewith), including, without limitation, the provisions pertaining to the collection, the investment and the handling of Revenues and funds, to the operation, maintenance and care of the System, to vacancies in offices, and to the depreciation of the System, are hereby made applicable hereto and are incorporated herein by reference as though fully set forth at this point. The effect of the above covenant shall be to continue the applicable provisions in full force and effect until the bond is paid, or provision made therefor, even after the payment of the Prior Bonds.

Section 9. The City covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell or lease the same, or any substantial portion thereof, without the prior written approval of the Bondholder and Soil and Water; provided, however, that nothing herein shall be construed to prohibit the City from making such dispositions of properties of the System and such replacements and substitutions for properties of the System as shall be necessary or incidental to the efficient operation of the System as a revenue-producing undertaking.

Section 10. (a) After making the required payments into the Water and Sewer Operation and Maintenance Fund (the "Operation and Maintenance Fund") being maintained in accordance with the Prior Ordinances and into the bond funds for the Prior Bonds and any additional bonds having a priority on the pledge of Revenues over the pledge in favor of the bond, there shall be paid from the Water and Sewer Fund (the "Revenue Fund") being maintained in accordance with the Prior Ordinances into an account of the City in a special fund to be created by the Bondholder and designated "Series 2004" (the "ADFA Water Bond Fund") for the purpose of paying the principal of and interest on the bond the amounts specified in (b) below.

(b) There shall be deposited from moneys in the Revenue Fund into the ADFA Water Bond Fund on each April 15 and October 15 after the bond is issued and delivered until October 15, 2007, the interest due on the bond on such dates. Commencing on the first business day of each month thereafter, there shall be deposited from moneys in the Revenue Fund into the ADFA Water Bond Fund an amount equal to 1/6 of the amount of principal of and interest on the bond next due (or due in case of the months of April and October).

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

(d) When the moneys held in the ADFA Water Bond Fund which represent payments by the City and interest earnings thereon or proceeds of investments therefrom (collectively, "City Funds") shall be and remain sufficient to pay in full the principal of and interest on the bond, the City shall not be obligated to make any further payments into the ADFA Water Bond Fund.

(e) All moneys in the ADFA Water Bond Fund representing City Funds shall be used solely for the purpose of paying the principal of and interest on the bond and the City shall automatically receive a credit for the amount of such City Funds on

hand in the ADFA Water Bond Fund and available for the payment of any principal and interest currently due on an interest or principal payment date irrespective of whether the Bondholder has applied or caused to be applied such funds on that date for such purpose. The City shall receive a credit for all earnings and income derived from the investment of City Funds each April 15 and October 15 and such earnings and income shall be credited against the next six monthly payments.

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

Section 11. After making the payments into the ADFA Water Bond Fund required by Section 10 hereof, there shall be paid from the Revenue Fund the Servicing Fee to the Authority. The Servicing Fee shall be payable on each date interest on the bond is due and shall be calculated on the same basis as interest on the bond. The payment of the Servicing Fee is expressly made subordinate to the payment of the principal of and interest on the bond.

Section 12. After making the payments and deposits described in Sections 10 and 11 hereof, there shall be deposited into the Water and Sewer Depreciation Fund (the "Depreciation Fund"), the amount required by the Prior Ordinances.

Section 13. The City shall assure that (i) not in excess of 10% of the proceeds of the bond is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the bond during the term thereof is, under the terms of the bond or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the proceeds of the bond are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the bond during the term thereof is, under the terms of the bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of proceeds of the bond

used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements.

The City shall assure that not in excess of 5% of the proceeds of the bond are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this Section, "Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

The City covenants that it will not enter into any wholesale water contracts with non-governmental entities or modify existing wholesale water contracts with non-governmental entities if such contracts or modifications of existing contracts will cause a violation of this Section.

Section 14. The principal and interest installments shall be prepayable prior to maturity as provided in the bond form in Section 6 hereof.

Section 15. As long as the bond is outstanding, the City shall not issue or attempt to issue any bonds having or claimed to be entitled to a priority of lien on Revenues over the lien securing the bond, including any and all future extensions, betterments and improvements to the System except as provided in this Section.

The City may issue additional revenue bonds having a priority on or on a parity with the lien on Revenues in favor of the bond to finance or pay the cost of constructing extensions, betterments and improvements to the System or to refund outstanding System Bonds if there shall have been procured and filed with the City Clerk and the Bondholder a statement by a certified public accountant not in the regular employ of the City ("Accountant") reciting the opinion that (i) the Net Revenues (Net Revenues being gross Revenues less operation and maintenance expenses, but not including depreciation) for the fiscal year preceding the year in which such additional bonds are to be issued were not less than 115% of the maximum annual debt service requirements (including principal, interest and financing and administrative fees) on all outstanding System Bonds and the bonds then proposed to be issued plus the maximum annual Servicing Fee or (ii) the Net Revenues for the fiscal year succeeding the year in which such additional bonds are to be issued are projected to be sufficient in amount, taking in consideration any enacted increase in Revenues, to be not less than 115% of the maximum annual debt service requirements (including principal, interest and financing and administrative

fees) on all outstanding System Bonds and the bonds then proposed to be issued plus the maximum annual Servicing Fee.

The additional bonds, the issuance of which is restricted and conditioned by this Section, shall not be deemed to mean bonds the security and source of payment of which are subordinate and subject to the priority of the bond and such additional bonds may be issued without complying with the terms and conditions of this Section.

Section 16. It is covenanted and agreed by the City with the Bondholder, the Authority and Soil and Water that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State and by this Ordinance, including, without limitation, the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, segregating Revenues and applying them to the respective funds maintained pursuant to the Prior Ordinances and this Ordinance.

The City covenants and agrees that the Bondholder shall have the protection of all the provisions of the Authorizing Legislation, and that the City will diligently proceed to enforce those provisions to the end of the Bondholder realizing fully upon its security. And, if the City shall fail to proceed within 30 days after written request shall have been filed by the Bondholder, the Bondholder may proceed to enforce all such provisions.

If there be any default in the payment of the principal of or interest on the bond, or if the City defaults in any ADFA Water Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance, the Bondholder may, by proper suit, compel the performance of the duties of the officials of the City under the laws of the State. In the case of a default in the payment of the principal of and interest on the bond, the Bondholder may apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the Bondholder 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, repair and maintenance and to pay the bond and interest outstanding and to apply Revenues in conformity with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the City. No remedy herein conferred upon or reserved to the Bondholder is intended to be exclusive of any other remedy or remedies herein provided or provided by law, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law. No delay or omission of the Bondholder 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 default or an acquiescence therein; and every power and remedy given by this Ordinance to the Bondholder may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon. Any costs of enforcement of the bond or of any provision of this Ordinance, including reasonable attorney's fees, shall be paid by the City. The Authority may enforce all rights and exercise all remedies available to the Bondholder in the event the Servicing Fee is not paid when due.

Section 17. When the bond has been executed and sealed as herein provided, it shall be delivered to the Bondholder upon payment of all or a portion of the purchase price in accordance with the Agreement. The sale proceeds shall be deposited, as and when received, in a special account of the City hereby created in a bank selected by the City that is a member of the Federal Deposit Insurance Corporation and designated the "2004 Water Construction Fund" (the "Construction Fund"). The moneys in the Construction Fund shall be used for reimbursing the City for the costs paid in accomplishing the Improvements, expenses incidental thereto and the expenses of issuing the bond approved in accordance with the Agreement. Payments from the Construction Fund shall be by check or voucher signed by a person designated by the City and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

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 the Mayor and by the consulting engineer, which certificate shall state, among other things, the date of the completion and that all obligations payable from the Construction Fund have been discharged. A copy of the certificate shall be filed with the depository bank, the Bondholder and Soil and Water.

Section 18. The terms of this Ordinance shall constitute a contract among the City, the Bondholder and Soil and Water and no variation or change in the undertaking herein set forth shall be made while the bond is outstanding unless consented to in writing by the Bondholder and Soil and Water.

Section 19. The City agrees that it will keep proper records, books and accounts relating to the operation of the System, which shall be kept separate from all other records and accounts of the City, in which complete and correct entries shall

be made of all transactions relating to the operation of the System in accordance with generally accepted government accounting standards. Such books shall be available for inspection by the Bondholder and Soil and Water, or the agent or the representative of either, at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an Accountant at least once each year. The City agrees that it shall also furnish to the Bondholder and Soil and Water (1) on or before 30 days after the close of each fiscal year, if requested, a statement of the operations of the System for the past fiscal year in form and content in the manner hereinafter specified, and (2) on or before 120 days after the close of each fiscal year, if requested, a copy of the audit report of the Accountant. The first report required by the last preceding sentence shall contain at least the following information:

- (a) Statement of income and expense for the System;
- (b) Balance sheet for the System;
- (c) Schedule of insurance policies and fidelity bonds showing, with respect to each policy and bond, the amount and nature of risk covered, the expiration date, and the name of the insurer; and
- (d) Schedule of the number of customers and showing the rate schedule currently in effect.

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

Section 20. The City covenants and agrees that it will maintain the System in good condition and operate it in an efficient manner and at reasonable cost. The City agrees that, to the extent comparable protection is not otherwise provided to the satisfaction of the Bondholder and Soil and Water, it will insure, and at all times keep insured in a responsible insurance company or companies selected by the City and authorized and qualified under the laws of the State to assume the risk thereof, all above-ground structures of the System against loss or damage thereto in amounts and against such risks as are customarily insured against in connection with similar facilities and undertakings as the System. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repair work.

Section 21. The City agrees that the Bondholder may pledge the bond as security for the ADFB Bonds, and the ADFB Trustee and/or the municipal bond insurer for the ADFB Bonds may exercise any rights and remedies available to the Bondholder under this Ordinance or the Agreement while the bond is pledged and/or the ADFB Bonds are insured. In addition, the City agrees that while the bond is pledged and/or the ADFB Bonds are insured, copies of all financial information shall be furnished to the ADFB Trustee and/or the municipal bond insurer.

Section 22. There shall be a statutory mortgage lien upon the water facilities which are part of the System (including all extensions, improvements and betterments now or hereafter existing) which shall exist in favor of the owner of the bond, and such water facilities shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest on the bond, provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of the State in City of Harrison v. Braswell, supra.

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

Section 24. Reference in this Ordinance to "Bondholder" shall include the original Bondholder or any registered assign thereof.

Section 25. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: May 20th, 2004.

APPROVED:

C. T. Hall
Mayor

ATTEST:

Bendi Curry
City Clerk

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Arkadelphia, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 00406 adopted at a regular session of the Board of Directors of the City, held at the regular meeting place in the City at 7 o'clock p.m., on the 20th day of May, 2004, and that the Ordinance is of record in Ordinance Record Book No. 2004, Page 06, now in my possession.

May GIVEN under my hand and seal on this 20th day of May, 2004.

Rendi Currey
City Clerk

(SEAL)