

ORDINANCE NO. 2001-05

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF WATER AND SEWER REFUNDING REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Clinton, Arkansas (the "City") owns and operates water and sewer facilities, which are operated as a single, integrated municipal undertaking (the "System") by the Clinton Water and Sewer Commission (the "Commission"); and

WHEREAS, the City Council has determined that the City will be able to receive a substantial savings by refunding (a) its Water and Sewer Revenue Bonds, Series 1997 (the "1997 Bonds") authorized by Ordinance No. 89-183 of the City, adopted March 23, 1989 (the "1989 Ordinance"), as supplemented by Ordinance No. 93-215, adopted on October 14, 1993 (the "1993 Ordinance"), Ordinance No. 95-232, duly adopted on December 14, 1995 (the "1996 Ordinance") and Ordinance No. 97-248, adopted April 22, 1997 (the "1997 Ordinance") and (b) its Water and Sewer Revenue Bonds, Series 1996 (the "1996 Bonds") authorized by the 1989 Ordinance, as supplemented by the 1993 Ordinance and the 1996 Ordinance; and

WHEREAS, the City can refund the 1997 Bonds and the 1996 Bonds (the "Bonds Refunded") by the issuance of Water and Sewer Refunding Revenue Bonds, Series 2001, in the principal amount of \$2,165,000 (the "bonds"); and

WHEREAS, the City has made arrangements for the sale of the bonds to Morgan Keegan & Company, Inc. (the "Purchaser"), at a price of 98.35% of par plus accrued interest (the "Purchase Price") pursuant to a Bond Purchase Agreement (the "Agreement") which has been presented to and is before this meeting; and

WHEREAS, the City has outstanding an issue of Water and Sewer Refunding and Improvement Revenue Bonds, Series 1964, dated March 1, 1964 (the "1964 Bonds") authorized by Ordinance No. 69, adopted on January 7, 1964; and

WHEREAS, the City has outstanding an issue of Water and Sewer Revenue Bonds, Series 1999 (the "1999 Bonds") authorized by the 1989 Ordinance, as supplemented by the 1993 Ordinance, the 1996 Ordinance, the 1997 Ordinance and Ordinance No. 99-271, adopted on March 4, 1999 (the "1999 Ordinance"); and

WHEREAS, the Preliminary Official Statement, dated October 1, 2001, offering the bonds for sale (the "Preliminary Official Statement") has been presented to and is before this meeting; and

WHEREAS, the Continuing Disclosure Agreement between the City and First National Bank of Lawrence County, Walnut Ridge, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the bonds, has been presented to and is before this meeting; and

WHEREAS, the coverage test for securing the bonds with a lien on revenues of the System on a parity with the lien on System revenues in favor of the 1999 Bonds has been met; and

WHEREAS, on January 31, 2001, the City issued its Water and Sewer Revenue Bond to the Arkansas Soil and Water Conservation Commission (the "Commission") in the principal amount of \$175,257.73 (the "Soil and Water Loan"); and

WHEREAS, the Commission has or will agree to subordinate its lien on System revenues securing the Soil and Water Loan to the lien securing the bonds;

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

Section 1. The refunding of the Bonds Refunded shall be accomplished. The Mayor and City Recorder are hereby authorized to take, or cause to be taken, all action necessary to accomplish the same and to execute all required contracts. The 1997 Bonds shall be called for redemption on May 1, 2002 at a redemption price equal to the principal amount being redeemed plus accrued interest. The 1996 Bonds shall be called for redemption on January 1, 2002 at a redemption price equal to the principal amount being redeemed plus accrued interest.

Section 2. The City Council hereby finds and declares that the period of usefulness of the System will be more than 20 years, which is longer than the term of the bonds.

Section 3. The offer of the Purchaser for the purchase of the bonds from the City at the Purchase Price for bonds bearing interest at the rates per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby accepted, and the Agreement, in substantially the form submitted to this meeting, is approved and the bonds are hereby sold to the Purchaser. The Mayor is hereby authorized and directed to execute and deliver the Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Agreement.

Section 4. The Preliminary Official Statement is hereby approved and the previous use of the Preliminary Official Statement by the Purchaser in connection with the sale of the bonds is hereby

in all respects approved and confirmed, and the Mayor be, and he is hereby, authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City for use in connection with the sale of the bonds as set forth in the Agreement.

Section 5. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 234, Subchapter 2, Title 14, Chapter 235, Subchapter 2, and Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated 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 Clinton, Arkansas Water and Sewer Refunding Revenue Bonds, Series 2001 are hereby authorized and ordered issued in the principal amount of \$2,165,000 for the purpose of refunding the Bonds Refunded, funding a debt service reserve and paying expenses of issuing the bonds. The bonds shall mature on March 1 in the years and in the amounts and shall bear interest as follows:

<u>Year</u> <u>(March 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2002	\$15,000	2.60%
2003	105,000	2.85
2004	150,000	3.10
2005	150,000	3.30
2006	155,000	3.50
2007	165,000	3.75
2008	165,000	4.00
2009	170,000	4.10
2010	180,000	4.20
2011	190,000	4.30
2012	105,000	4.40
2013	115,000	4.50
2014	120,000	4.60
2015	120,000	4.70
2016	125,000	4.80
2017	135,000	4.90

The bonds shall be dated November 1, 2001 and shall be issuable only as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Unless the City shall otherwise direct, the bonds shall be numbered from 1 upward in order of issuance. Each bond shall have a CUSIP number.

The bonds shall be registered initially in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), which shall be considered to be the registered owner of the bonds for all purposes under this Ordinance, including, without

limitation, payment by the City of principal of, redemption price, premium, if any, and interest on the bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten bond for each stated maturity date which shall be immobilized in the custody of DTC with the beneficial owners having no right to receive the bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership of beneficial interests in the bonds by book-entry on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book-entry, the City having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the bonds. The bonds as such shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository, without further action by the City.

If any securities depository determines not to continue to act as a securities depository for the bonds for use in a book-entry system, the City may establish a securities depository/ book-entry system relationship with another securities depository. If the City does not or is unable to do so, or upon request of the beneficial owners of all outstanding bonds, the City and the Trustee (hereinafter identified), after the Trustee has made provision for notification of the beneficial owners by the then securities depository, shall permit withdrawal of the bonds from the securities depository, and authenticate and deliver bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the securities depository or its nominee, all at the cost and expense (including costs of printing definitive bonds) of the City, if the City fails to maintain a securities depository/book-entry system, or of the beneficial owners, if they request termination of the system.

Prior to issuance of the bonds, the City shall have executed and delivered to DTC a written agreement (the "Representation Letter") setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the City with respect to the bonds so long as the bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the bonds other than the registered owners, as shown on the registration books kept by the Trustee. The Trustee shall take all action necessary for all representations of the City

in the Representation Letter with respect to the Trustee to at all times be complied with.

The authorized officers of the Trustee and the City shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a securities depository for all or any portion of the bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Interest on the bonds shall be payable on March 1, 2002, and semiannually thereafter on March 1 and September 1 of each year. Payment of each installment of interest shall be made to the person in whose name the bond is registered on the registration books of the City maintained by First National Bank of Lawrence County, Walnut Ridge, Arkansas, as Trustee and Paying Agent (the "Trustee"), at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such bond subsequent to such Record Date and prior to such interest payment date.

Each bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from November 1, 2001, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 7 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate upon any such bond shall be conclusive evidence that such bond has been authenticated and delivered under this Ordinance. The Certificate on any bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the bonds.

In case any bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated bond, or in lieu of and in substitution for such bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new bond. In the event any such bond shall have matured, instead of issuing a new bond, the City may pay the same without the surrender thereof. Upon the issuance of a new bond under this Section, the City 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.

The City shall cause books for the registration and for the transfer of the bonds as provided herein and in the bonds. The Trustee shall act as the bond registrar. Each bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered bond or bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

No charge shall be made to any owner of any bond for the privilege of transfer or exchange, but any owner of any bond requesting any such transfer or exchange 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 exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. The City shall not be required to transfer or exchange any bonds selected for redemption in whole or in part.

The person in whose name any bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, 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.

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

Section 6. The bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Recorder and shall have impressed or imprinted thereon the seal of the City. The bonds, together with interest thereon, are secured by and are payable solely from revenues derived from the System ("Revenues") which are hereby pledged and mortgaged for the equal and ratable payment of the bonds. The pledge of Revenues in favor of the bonds shall be on a parity with the pledge in favor of the 1999 Bonds, subordinate to the pledge in favor of the 1964 Bonds and senior to the pledge in favor of the Soil and Water Loan. The bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 7. The bonds and the Certificate shall be in substantially the following form and the Mayor and City Recorder are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Bond)

REGISTERED

REGISTERED

No. \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF VAN BUREN  
CITY OF CLINTON  
WATER AND SEWER REFUNDING  
REVENUE BOND,  
SERIES 2001

Interest Rate: \_\_\_\_\_ %

Maturity Date: March 1, \_\_\_\_\_

Dated Date: November 1, 2001

Registered Owner: Cede & Co.

Principal Amount: \_\_\_\_\_ Dollars

CUSIP No. : \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Clinton, County of Van Buren, State of Arkansas (the "City"), for value received, hereby promises to pay, but solely from the source as hereinafter provided and not otherwise, to the Registered Owner shown above upon the presentation and surrender hereof at the principal corporate trust office of First National Bank of Lawrence County, Walnut Ridge, Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee"), on the Maturity Date shown above, the Principal Amount shown above, 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 public and private debts and to pay by check or draft interest thereon, but solely from the source as hereinafter provided and not otherwise, in like coin or currency from the interest commencement date specified below at the Interest Rate per annum shown above, payable March 1, 2002 and semiannually thereafter on the first days of March and September of each year, until payment of such principal sum or, if this bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this bond. Payment of each installment of interest shall be made to the person in whose name this bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this bond subsequent to such Record Date and prior to such interest payment date.

This bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from the Dated Date shown above, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to issuer or its agent for registration of transfer, exchange, or payment and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL



inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

This bond is one of an issue of City of Clinton, Arkansas Water and Sewer Refunding Revenue Bonds, Series 2001, aggregating Two Million One Hundred Sixty-Five Thousand Dollars (\$2,165,000) in principal amount (the "bonds"), and is issued for the purpose of refunding certain outstanding bonds payable from revenues of the City's water and sewer (combined) system (the "System"), paying necessary expenses incidental thereto and to the authorization and issuance of the bonds, and funding a debt service reserve.

The bonds are 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 235, Subchapter 2, and Title 14, Chapter 164, Subchapter 4 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. 89-183, duly adopted on March 23, 1989, as supplemented by Ordinance No. 99-271, duly adopted on March 4, 1999 and Ordinance No. \_\_\_\_\_, duly adopted on \_\_\_\_\_, 2001 (collectively, the "Authorizing Ordinance"), and do not constitute an indebtedness of the City within any constitutional or statutory limitation. The bonds are not general obligations of the City, but are special obligations payable solely from the revenues derived from the operation of the System. The pledge of System revenues to the payment of the bonds is on a parity with the pledge in favor of the City's Water and Sewer Revenue Bonds, Series 1999 (the "1999 Bonds"), is subordinate to the pledge in favor of the City's Water and Sewer System Refunding and Improvement Revenue Bonds, Series 1964 and is senior to the pledge in favor of the City's Water and Sewer Revenue Bond, dated January 31, 2001. An amount of System revenues sufficient to pay the principal of and interest on the bonds and the 1999 Bonds has been duly pledged and set aside in the the 1971 Water and Sewer Revenue Bond Fund identified in the Authorizing Ordinance. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which the bonds are issued, of the nature and extent of the security for the bonds, and the rights and obligations of the City, the Trustee and the registered owners of the bonds. The City 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 bonds, including Trustee's fees, as the same become due and payable, to establish and maintain a debt service reserve and to make the required deposit for the depreciation of the System.