

ORDINANCE NO. 89-183

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

WHEREAS, the City of Clinton, Arkansas (the "City"), owns and operates water and sewer facilities, as a single, integrated municipal undertaking (the "System"); and

WHEREAS, the City has outstanding the following revenue bonds payable from System revenues: Water and Sewer Refunding and Improvement Revenue Bonds, Series 1964, dated March 1, 1964 (the "1964 Bonds"); Water and Sewer System Improvement Revenue Bonds, Series 1971, dated March 1, 1971 (the "1971 Bonds"); Water and Sewer Revenue Bonds, dated March 28, 1980 (the "1980 Bonds"); and Water and Sewer Revenue Bonds, Series 1986, dated April 12, 1988 (the "1988 Bonds"); and

WHEREAS, in order to receive debt service savings, the City Council has determined that it is in the best interest of the City to refund the 1980 Bonds and the 1988 Bonds (the "Bonds Refunded") with the proceeds of City of Clinton, Arkansas Water and Sewer Revenue Refunding Bonds, Series 1989 (the "Bonds") and available System revenues; and

WHEREAS, the City has obtained the certificate of an independent certified public accountant that conditions precedent to the issuance of parity bonds required by Ordinance No. 91 of the City, passed on September 23, 1971 (the "1971 Ordinance") have been fully met and complied with; and

WHEREAS, the City has made arrangements for the sale of \$720,000 in aggregate principal amount of the Bonds to T.J. Raney & Sons, Inc. (the "Purchaser"), at a price of 97% of par plus accrued interest from the date of the Bonds to date of delivery pursuant to a Bond Purchase Agreement (the "Agreement") which has been presented to and is before this meeting;

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

Section 1. That the refunding of the Bonds Refunded (the "refundings") shall be accomplished. The Mayor and City Recorder are hereby authorized to take or cause to be taken, all action necessary to accomplish the refunding and to execute any contracts and documents necessary to that end.

Section 2. That the City Council hereby finds and declares that the period of usefulness of the System will be more than forty (40) years, which is longer than the term of the Bonds. The City Council further finds and declares that the conditions required by the 1971 Ordinance have been fully met and complied with and that, therefore, the Bonds are issued on a parity of lien, pledge and security on the System revenues and on the System with the 1971 Bonds.

Section 3. That the offer of the Purchaser is hereby accepted for the purchase of \$720,000 in principal amount of Bonds from the City at a price of 97% of par plus accrued interest, for Bonds bearing interest at the rates, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby, accepted and the Bonds are hereby sold to the Purchaser. The Agreement is hereby approved and confirmed and the Mayor is hereby authorized 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. That under the authority of the Constitution and laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated, and applicable decisions of the Supreme Court of the State of Arkansas, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), City of Clinton, Arkansas Water and Sewer Revenue Refunding Bonds, Series 1989, are hereby authorized and ordered issued in the principal amount of \$720,000 for the purpose of accomplishing the refunding, paying necessary expenses incidental thereto and to the authorization and issuance of the Bonds.

The Bonds shall bear interest at the rates and shall mature on May 1 in the years and in principal amounts as follows:

Year (May 1)	Principal Amount	Interest Rate
1990	\$10,000	6.50%
1991	10,000	6.50
1992	15,000	6.60
1993	15,000	6.65
1994	15,000	6.70
1995	15,000	6.80
1996	15,000	6.85
1997	20,000	6.90
1998	20,000	6.95
1999	20,000	7.00
2000	20,000	7.10
2001	25,000	7.15
2002	25,000	7.20
2003	25,000	7.25
2004	30,000	7.30
2005	30,000	7.35
2006	35,000	7.40
2007	35,000	7.45
2008	40,000	7.50
2009	40,000	7.50
2010	45,000	7.55
2011	50,000	7.60
2012	50,000	7.65
2013	55,000	7.70
2014	60,000	7.75

The Bonds shall bear interest from their respective dates and the Bonds shall be issuable only as fully registered Bonds in denominations of \$5,000 or an integral multiple thereof, unless the City shall otherwise direct, the Bonds shall be numbered from 1 upward in order of issuance.

Bonds initially issued shall be dated May 1, 1989. Bonds issued upon transfer or exchange shall be dated as of the interest payment date to which interest has been paid as of the date on which delivered or, if delivered prior to a date on which interest has been paid, the date of the Bond for which exchanged. Interest on the Bonds shall be payable on November 1, 1989, and semiannually thereafter on May 1 and November 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 (the "Trustee"), at the end of the fifteenth (15th) day of the month 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.

In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and delivered 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's paying the reasonable expenses and charges of the City in connection therewith, and, in the case of a Bond destroyed or lost, his filing with the City evidence satisfactory to it that such Bonds were destroyed or lost, and of his ownership thereof, and furnishing the City with indemnity satisfactory to it. 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 4, 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 connected therewith.

The City shall cause books for the registration and for the transfer of the Bonds as provided herein and in the Bonds to be kept by the Trustee. Each Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing upon surrender at the office of the Trustee. Upon such transfer, a new fully registered Bond or Bonds of the same maturity and for the same 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 in connection therewith shall be paid by the City. The Trustee shall not be required (i) to issue, transfer or exchange any Bond for a period beginning at the opening of business 15 days before any selection of Bonds for redemption and ending at the close of business on the day of the first mailing of the relevant notice of redemption, or (ii) 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 of Arkansas 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 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 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 5. That 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, imprinted, engraved or lithographed thereon the seal of the City. The Bonds, together with interest thereon, are secured by and are payable solely from revenues of the System. System revenues are hereby irrevocably pledged and mortgaged for the equal and ratable payment of the Bonds on a parity of lien, pledge and security with the 1971 Bonds but subordinate to the pledge in favor of the 1964 Bonds. The Bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. That the Bonds 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 REVENUE REFUNDING BOND
SERIES 1989

Interest Rate: _____ % Dated Date: _____
Registered Owner: _____
Principal Amount: _____ Thousand Dollars (\$ _____)
Maturity Date: _____ 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, or registered assigns, the Principal Amount shown above on the Maturity Date 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 interest on the unpaid Principal Amount, but solely from the source as hereinafter provided and not otherwise, in like coin or currency from the Dated Date shown above at the Interest Rate per annum shown above, payable November 1, 1989 and semiannually thereafter on May 1 and November 1 of each year, until payment 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 of each installment of interest shall be 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 First National Bank of Lawrence County, Walnut Ridge, Arkansas (the "Trustee"), at the end of the fifteenth (15th) day of the month 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. Payment of Principal shall be made upon presentation and surrender of this Bond to the Trustee at its principal corporate trust office in Walnut Ridge, Arkansas.

This Bond is one of an issue of City of Clinton, Arkansas Water and Sewer Revenue Refunding Bonds, Series 1989,

aggregating Seven Hundred Twenty Thousand Dollars (\$720,000) in principal amount (the "Bonds"), issued for the purpose of refunding certain prior bonds payable from revenues of the System (hereafter defined) and paying necessary expenses incidental thereto and to the authorization and issuance of the Bonds.

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated, 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. 91 of the City, passed on September 23, 1971, and Ordinance No. _____ of the City, passed on _____, 1989 (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 of the City's combined water and sewer system (the "System"). In this regard, the pledge securing the Bonds is on a parity of lien, pledge and security with the pledge securing the City's Water and Sewer System Improvement Revenue Bonds, Series 1971, dated March 1, 1971, (the "1971 Bonds"), but subordinate to the pledge securing the City's outstanding Water and Sewer Refunding and Improvement Revenue Bonds, Series 1964, dated March 1, 1964 so long as any of the 1964 Bonds or the 1971 Bonds are outstanding. An amount of System revenues sufficient to pay the principal of and interest on the Bonds and the 1971 Bonds has been duly pledged and set aside into the 1971 Water and Sewer Bond Fund created by 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 Bondholders. 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, for the payment of the principal of and interest on all obligations payable from System revenues, as the same become due and payable, to establish and maintain any required debt service reserves and to make the required deposit for the depreciation of the System.

REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND ON THE REVERSE SIDE HEREOF WHICH HAVE THE SAME EFFECT AS IF SET FORTH IN THIS PLACE.

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

IN WITNESS WHEREOF, the City of Clinton, Arkansas has caused this Bond to be executed by its Mayor and City Recorder, by their manual or facsimile signatures thereunto duly authorized and its corporate seal to be impressed, lithographed or imprinted on this Bond, all as of the Dated Date shown above.

CITY OF CLINTON, ARKANSAS

ATTEST:

By (facsimile signature)
Mayor

(facsimile signature)
City Recorder

(SEAL)

(Reverse Side of Bond)

CITY OF CLINTON, ARKANSAS
WATER AND SEWER REVENUE REFUNDING BOND, SERIES 1989
FURTHER PROVISIONS

The Bonds must be redeemed from proceeds of the Bonds not needed for the purposes intended, on any interest payment date, in whole or in part, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine).

The Bonds are subject to redemption at the option of the City, in whole or in part, from funds from any source, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine) on any interest payment date on or after May 1, 1994, at redemption prices (expressed as percentages of the principal amount being redeemed) plus accrued interest to the redemption date as follows:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
May 1, 1994 or November 1, 1994	102 $\frac{1}{2}$ %
May 1, 1995 or November 1, 1995	102%
May 1, 1996 or November 1, 1996	101 $\frac{1}{2}$ %
May 1, 1997 or November 1, 1997	101%
May 1, 1998 or November 1, 1998	100 $\frac{1}{2}$ %
May 1, 1999 and thereafter	100%

Notice of redemption identifying the Bonds or portions thereof (which must be integral multiples of \$5,000) to be redeemed and the date on which they shall be presented for payment shall be given by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to all registered owners of Bonds to be redeemed (in whole or in part). Failure to mail an appropriate notice or any such notice to one or more registered owners of Bonds to be redeemed (in whole or in part) shall not affect the validity of the proceedings for redemption of other Bonds or portions thereof as to which notice of redemption is duly given in proper and timely fashion. All such Bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date.

This Bond is transferable by the registered owner hereof in person or by his attorney-in-fact duly authorized in writing at the office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this Bond. 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. This Bond is issued with the intent that the laws of the State of Arkansas shall govern its construction.

The City may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes, and the City shall not 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 Authorizing Ordinance until the Certificate of Authentication hereon shall have been signed by the Trustee.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Bonds, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the above referred to revenues pledged to the payment of the principal of and interest on the Bonds as the same become due and payable will be sufficient in amount for that purpose.

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds designated Series 1989 and issued under the provisions of the within mentioned Authorizing Ordinance.

FIRST NATIONAL BANK OF LAWRENCE
COUNTY
Walnut Ridge, Arkansas
TRUSTEE

By _____
Authorized Signature

(Form of Assignment)
ASSIGNMENT

FOR VALUE RECEIVED, _____ assigns and transfers unto ("Transferor"), hereby sells, 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

GUARANTEED BY: _____

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 7. That the City has heretofore fixed (i) water rates by Ordinance No. 153, adopted on the 8th day of January, 1987, and (ii) sewer rates by Ordinance No. 143, adopted on the 28th day of July, 1986, which water and sewer rates are hereby confirmed and continued. Reference is hereby made to those Ordinances for the details thereof and other provisions pertaining thereto.

The City covenants and agrees that the rates charged for services of the System shall never be reduced while any of the Bonds are outstanding unless there is obtained from an independent certified public accountant a certificate that the net revenues of the System (net revenues being defined as gross 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 under generally accepted accounting principles applicable to municipal water and sewer facilities but excluding depreciation, interest and bond amortization expenses), with the reduced rates, will always be equal to the amount required to be set aside for the Depreciation Fund and the debt service reserve for all obligations of the City to which System revenues are pledged (collectively, "System Obligations"), and leave a balance equal to at least 120% of the aggregate average annual principal and interest requirements on all outstanding System Obligations.

The City further covenants and agrees that the rates shall, if and when necessary, from time to time, be increased in such manner as will produce net revenues equal to at least 120% of the amount necessary for paying principal and interest when due on all outstanding System Obligations.

Section 8. That none of the facilities or services afforded by the System shall be furnished without a charge being made therefor. In the event that the City or any department, agency or instrumentality thereof shall avail itself of the facilities and services afforded by the System, the reasonable value of the services or facilities so afforded shall be charged against the City or such department, agency or instrumentality and shall be paid for as the charges therefor accrue. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be used and accounted for in the same manner as any other revenues derived from the operation of the System. Nothing herein shall be construed as requiring the City or any department, agency or instrumentality thereof to avail itself of the facilities or services afforded by the System.

Section 9. That the Treasurer of the City shall be custodian of the gross revenues derived from the operation of

the System and that officer shall give bond in the sum of System revenues in his custody at any one time for the faithful discharge of his duties as such custodian. All moneys received by the Treasurer shall be deposited by him in such depository or depositories for the City as may be lawfully designated from time to time by the City; subject, however, to the giving of security as now or as hereafter may be required by law and provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC"). All deposits shall be in the name of the City and shall be so designated as to indicate the particular fund to which the revenues belong. Any deposit in excess of the amount insured by FDIC shall be secured by bonds or other direct or fully guaranteed obligations of the United States of America ("Government Obligations") unless invested directly in Government Obligations.

Section 10. That 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; 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 11. That since the Bonds are being issued on a parity of security with the 1971 Bonds, the Bonds are to have the benefit of and are to be governed by the ordinances authorizing the 1964 Bonds and the 1971 Bonds, except as it may be in irreconcilable conflict with this Ordinance. Notwithstanding any provisions hereof, all the provisions of this Ordinance shall be interpreted in such manner as to preserve all the substantive rights of the holders of the 1964 Bonds and the 1971 Bonds (the "Prior Bonds").

Section 12. That there is presently being maintained, in connection with the Prior Bonds, certain funds established by the Ordinance No. 69 of the City, adopted January 7, 1964 in connection with the 1964 Bonds and the 1971 Ordinance, specifically, the: (1) Water and Sewer System Revenue Fund (the "Revenue Fund"); (2) the Water and Sewer System Operation and Maintenance Fund (the "Operation and Maintenance Fund"); (3) Water and Sewer System Revenue Bond and Interest Sinking Fund (the "1964 Bond Fund"); (4) the 1971 Water and Sewer Bond Fund (the "Bond Fund"); and (5) the Water and Sewer System Depreciation Fund (the "Depreciation Fund"). All of these funds and the covenants and restrictions set forth in connection therewith, are hereby ratified, confirmed and continued for the