ORDINANCE NO. 2008-09

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

WHEREAS, the City of Mulberry, Arkansas (the "City") owns and operates water and sewer facilities, which water and sewer facilities are operated as one interrelated municipal undertaking (the "System"), and has determined that extensions, betterments and improvements to the water facilities of the System (the "construction") should be made in order that the City and its inhabitants may have adequate and proper water facilities; and

WHEREAS, the City Council has had prepared by a duly qualified consulting engineer a preliminary report and estimates of costs of the proposed construction, which have been examined and approved by the City Council and a copy filed in the office of the City Recorder where they may be inspected by any interested person; and

WHEREAS, the total estimated cost of the construction and authorizing and issuing bonds and paying interest during construction (the "Estimated Cost") is $936,000; and

WHEREAS, the City does not have available funds to undertake the construction but can obtain the necessary funds for paying the Estimated Cost by the issuance of a Water and Sewer Revenue Bond in the principal amount of $936,000 (the "bond"); and

WHEREAS, the City has entered into a Loan Agreement with the United States Department of Agriculture (the "Government"), whereby the Government has committed to purchase the bond; and

WHEREAS, the Loan Agreement provides that the bond will bear interest at the lower of the prevailing Rural Development ("RD") interest rate at the time of loan approval (3.625%) or the prevailing RD interest rate at the time the bond is issued; and

WHEREAS, the City is authorized, under the provisions of Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated , Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, and Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated (collectively, the "Authorizing Legislation"), to accept the offer of the Government; and

WHEREAS, the City has outstanding an issue of Water and Sewer Revenue Bond, Series 1999, dated November 15, 1999 (the "1999 Bond"), authorized by Ordinance No. 99-18 of the City, adopted September 21, 1999, as amended by Ordinance No. 99-19 of the City, adopted October 19, 1999 (collectively, the "1999 Ordinance"); and

WHEREAS, the City has outstanding an issue of Water and Sewer Revenue Bonds, dated October 6, 1994 (the "1994 Bonds"), authorized by Ordinance No. 94-2 of the City, adopted March 7, 1994 (the "1994 Ordinance" and collectively, with the 1999 Ordinance, the "Prior Bond Ordinances"); and

WHEREAS, the City has outstanding a note payable to the Arkansas Natural Resources Commission, dated October 25, 1975 and restructured on February 1, 1988 (the "1975 Note" and collectively, with the 1999 Bond and 1994 Bonds, the "Prior Bonds"); and

WHEREAS, the City has levied and is collecting two 0.50% sales and use taxes (the "Taxes") and the revenues from the Taxes are available for use in support of the System;

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

Section 1. The construction shall be accomplished. The Mayor and City Recorder are hereby authorized to take, or cause to be taken, all action necessary to accomplish the construction and to execute all required contracts and documents.

Section 2. The offer of the Government of par for the bond is hereby accepted, and the bond is hereby sold to the Government. The purchase price shall be paid in multiple advances as funds are needed for the construction, to pay bond issuance expenses, and to fund interest during construction.

Section 3. The City Council hereby finds and declares that the period of usefulness of the System after completion of the construction will be more than 40 years.

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), a City of Mulberry, Arkansas Water and Sewer Revenue Bond is hereby authorized and ordered issued in the principal amount of $936,000. The bond shall be dated as of the date of its delivery and shall bear interest at the lower of the prevailing RD interest rate at the time of loan approval (3.625% per annum) or the prevailing RD interest rate at the time the bond is issued. Interest only shall be payable on the first anniversary date from the date of the bond; principal of and interest on the bond shall be payable in monthly

amortized installments commencing thirteen (13) months from the date of the bond and continuing monthly thereafter on the same day (provided, however, that if the bond is dated on the 29th, 30th or 31st day of any month, the monthly payments shall be made on the 28th day of each month). If the interest rate is 3.625% the amortized monthly payments shall be in the amount of $3,744 each. If the interest rate is lower, the monthly payments shall be in the amount necessary to amortize the bond in 468 equal monthly installments. The amount of each monthly payment shall be applied first to payment of interest then due and the balance shall be applied to a reduction of principal. The amortized installments of principal and interest shall continue until the principal of the bond, with interest, is fully paid, except that final payment of the bond shall be due and payable not later than forty (40) years from the date of the bond, subject to prepayment prior to maturity as provided in the face of the bond.

The bond will be issued in typewritten form, registered as to both principal and interest, payable to the registered owner, or registered assigns (the "Owner"), and shall be numbered R-1.

Payment of principal and interest shall be by check or draft mailed to the registered owner thereof at its address shown on the bond registration books of the City which shall be maintained by the City Recorder 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 Recorder 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 Recorder.

Section 5. The bond shall be executed on behalf of the City by the Mayor and City Recorder 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 are secured by a pledge of and are payable from revenues derived from the operation of the System ("Revenues"). The pledge of Revenues is subordinate to the pledge in favor the Prior Bonds. The revenues from the Taxes ("Tax Revenues") have been designated for use in connection with the System. So long as a designation continues, that part of the Tax Revenues so designated shall be deemed revenues of the System. However, no part of the Tax Revenues is pledged hereunder or shall be used for the payment of the bond, and the City shall have no obligation to the owner of the bond to continue the designation of, or to use,

any part of the Tax Revenues for the benefit of the System. The bond and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. (a) The bond shall be in substantially the following form and the Mayor and City Recorder 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 CRAWFORD
CITY OF MULBERRY
_____% WATER AND SEWER REVENUE BOND

No. R-1 $936,000

KNOW ALL MEN BY THESE PRESENTS:

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

NINE HUNDRED THIRTY SIX THOUSAND 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 _____% 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 and shall be payable as follows: interest only shall be payable on the first anniversary date from the date of this bond; commencing thirteen (13) months from the date of this bond and monthly thereafter on the same day (except that if this bond is dated the 29th, 30th or 31st day of any month, each monthly payment shall be due on the 28th day of the month) amortized monthly installments of principal and interest in the amount of $_____ each shall be payable until the principal and interest are fully paid, except that final payment of the entire indebtedness, if not sooner paid, shall be due and payable 40 years from the date of this bond.

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 Recorder as Bond Registrar, and such

payments shall fully discharge the obligation of the City to the extent of the payments so made.

The City owns and operates a water and sewer (combined) system (the "System"). This bond is issued for the purpose of financing the cost to the City of constructing extensions, betterments and improvements to the water facilities of the System, and costs of authorizing and issuing this bond and paying interest during construction (the "Costs"), 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 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, and Title 14, Chapter 235, Subchapter 2 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), and pursuant to Ordinance No. _____ of the City, duly adopted and approved on the ____ day of _____, 2008 (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.

Prepayments of principal installments, or any portion thereof, may be made from funds from any source at any time at the option of the City in inverse chronological order of maturity at a price of the principal amount thereof plus accrued interest. Such prepayments shall not affect the obligation of the City to pay the remaining installments as scheduled herein.

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 revenues derived from the operation of the System ("Revenues"). In this regard, the pledge of Revenues is subordinate to the pledge in favor of the City's outstanding Water and Sewer Revenue Bonds, Series 1999, dated November 15, 1999, Water and Sewer Revenue Bonds, dated October 6, 1994 and a note payable to the Arkansas Natural Resources Commission, dated October 25, 1975 and restructured on February 1, 1988, so long as any of such obligations are outstanding. A sufficient amount of Revenues to pay principal and interest has been duly set aside and pledged as a special fund for that purpose, identified as the "2008 Water and Sewer Revenue Bond Fund," created by 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 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.

This bond may be assigned, and in order to effect such assignment the assignor shall promptly notify the City Recorder by registered mail, and the assignee shall surrender this bond to the City Recorder 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 Recorder), prior to such surrender for transfer.

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

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 Mulberry, Arkansas has caused this bond to be executed in its name by its Mayor and City Recorder, thereunto duly authorized, and its corporate seal to be affixed, all as of the _____ day of _____, 2008.

CITY OF MULBERRY, ARKANSAS

ATTEST: By _____
Mayor

_____
City Recorder

(SEAL)

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

(b) Pending the preparation and delivery of the permanent and definitive bond hereinabove authorized, temporary bonds in the aggregate principal amount of not to exceed $936,000 may be issued for the purpose of providing construction funds immediately and in anticipation of the issuance of such permanent bond. The temporary bonds shall be in such denominations as the Mayor shall determine, be numbered from 1 upwards, be sold at a price of par, be dated the day of delivery, bear interest at the

rate of not to exceed 5.75% per annum and be payable two (2) years from their date. Upon delivery of the permanent bond, the temporary bonds to the extent then outstanding, with accrued interest, shall be exchanged for, or paid from the proceeds of, the permanent bond, and shall be canceled. The temporary bonds shall be in substantially the form of the permanent bond.

Section 7. The City has heretofore fixed water and sewer rates by ordinances duly adopted. 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.

The City covenants and agrees that the water and sewer rates heretofore established by the City will produce gross Revenues at least sufficient (a) to pay the principal of and interest on all outstanding bonds to which Revenues are pledged ("System Bonds"), as the same become due, and (b) along with Tax Revenues lawfully appropriated for and transferred to the System, to pay operation and maintenance expenses of the System, to pay the principal and interest on all System Bonds as the same become due, create and maintain debt service reserves, and to make the required deposits for depreciation as specified by the Prior Bond Ordinances. The City covenants always to maintain rates (including increases as necessary) which, along with the Tax Revenues lawfully appropriated for and transferred to the System, will provide for the maintenance of the funds hereinafter described. The rates shall never be reduced while the bond is outstanding unless there is obtained from a certified public accountant not in the regular employ of the City ("Accountant") a certificate reciting the opinion that the proposed new rates will produce sufficient net Revenues (net Revenues being gross Revenues to be derived during the next 12 months less the reasonably anticipated cost of operation and maintenance for the next 12 months and less the required deposits for depreciation of the System for the next 12 months) equal to not less than 120% of the maximum amount that will become due in any year thereafter for principal and interest on all System Bonds then outstanding.

The City further covenants and agrees that in the event either of the Taxes are repealed or are not collected for any reason, the City will within thirty (30) days thereafter undertake an analysis of the existing water and sewer rates of the System and increase the rates as required above.

Section 8. If any water or sewer charge is not paid within the time allowed by applicable ordinances, the City shall take appropriate action to collect the delinquent account.

Section 9. All of the provisions of the Prior Bond Ordinances (including those incorporated by reference), as now in effect, except those provisions clearly inapplicable hereto and in

direct conflict herewith, including, without limitation, the provisions pertaining to the collection and the handling of Revenues and funds, to the depreciation of the System and to vacancies in office, 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 even after the payment of the Prior Bonds, until the bond is paid or provision made therefor. In this regard, nothing herein shall be construed to in any manner impair the security of the Prior Bonds or the priority of the pledge on Revenues in favor of the Prior Bonds, but it is covenanted that when the Prior Bonds is paid (or the required provision made therefor), that the bond will become a first lien bond in the sense that the pledge of Revenues in favor of the bond will become a first and prior pledge on the Revenues. Furthermore, it is expressly covenanted and agreed that the City will not issue or attempt to issue bonds ranking, or claimed to rank, on a parity of security with the Prior Bonds.

Section 10. All Tax Revenues lawfully appropriated to the System shall be deposited into the Revenue Fund.

Section 11. (a) After making the required payment into the Water and Sewer Operation and Maintenance Fund (the "Operation and Maintenance Fund") being maintained pursuant to the Prior Bond Ordinances and the bond funds for the Prior Bonds, there shall be paid by the City Treasurer from the Water and Sewer Fund being maintained pursuant to the Prior Bond Ordinances (the "Revenue Fund") into a special fund in the name of the City which is hereby created and designated "2008 Water and Sewer Revenue Bond Fund" (the "Bond Fund"), the sums in the amounts and at the times hereinafter stated in subsection (b) for the purpose of providing funds for the payment of the principal of and interest on the bond as it matures, and to establish a debt service reserve.

(b) There shall be accumulated in the Bond Fund prior to the maturity of the temporary bonds an amount equal to the interest on the temporary bonds due on such date. There shall also be accumulated in the Bond Fund prior to the first anniversary of the date of the permanent bond an amount equal to the interest on the bond due on such date. All or a portion of that interest will be funded from capitalized interest derived from bond proceeds.

Commencing on the first business day of the thirteenth month after delivery of the permanent bond and continuing on the first business day of each month thereafter until the bond with interest thereon has been paid in full or provision made for such payment, there shall be deposited into the Bond Fund a sum equal to the installment of principal and interest due on the next monthly installment payment date, for the bond, plus an additional sum of $375. When a debt service reserve shall have been accumulated, and so long as it shall remain, in the amount equal to the lesser of

(i) $44,928 or (ii) the maximum annual debt service requirements on the bond (the "required level"), the additional payment need not be made.

(c) If Revenues are insufficient to make the required payment on or before the first business day of the following month into the 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 Bond Fund on the first business day of the next month.

(d) If, for any reason, the City shall fail at any time to make any of the required payments into the Bond Fund, or if for any reason the Bond Fund shall be insufficient at any time to make the required payments for principal and interest, as due, any sums then held in the debt service reserve shall be used to the extent necessary in the payment of the principal of and interest on the bond, but such reserve shall be reimbursed from the first available moneys in the Revenue Fund by the increased monthly payments specified in (b) above. The debt service reserve shall be used solely as herein provided.

(e) When the moneys held in the Bond Fund, including the debt service reserve, shall be and remain sufficient to pay the outstanding principal of and interest on the bond, the City shall not be obligated to make any further payments into the Bond Fund.

(f) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bond, except as herein specifically provided. If a surplus shall exist in the Bond Fund over and above the amount necessary to insure the payment, when due, of principal and interest and over and above the debt service reserve's required level, such surplus shall be transferred to the Revenue Fund.

(g) It shall be the duty of the City Treasurer to withdraw from the Bond Fund and to pay to the owner, on or before the date on which each installment hereunder is due, an amount equal to the amount of such installment. No withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance.

(h) The bond shall be specifically secured by a pledge of all Revenues, including the Revenues required to be placed into the 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.

(i) Provision has been made for the payment of the principal of and accrued interest on the temporary bonds from the

proceeds of the permanent bond and the City shall not be required to make any payments into the Bond Fund until delivery of the permanent bond unless necessary to prevent a default on the temporary bonds but the City covenants to make payments into the Bond Fund at the times and in the amounts, if any, necessary to prevent a default in payment of principal of or interest on the temporary bonds.

Section 12. After making the payments hereinabove required, there shall be paid from the Revenue Fund into the Water and Sewer Depreciation Fund being maintained pursuant to the Prior Bond Ordinances (the "Depreciation Fund") the amounts required by the Prior Bond Ordinances.

Section 13. No moneys held for credit of the Revenue Fund shall be used to make any expenditures other than expenditures for the System.

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.

Nothing herein shall be construed in any manner to prevent the issuance by the City of additional revenue bonds to finance or pay the cost of constructing extensions, betterments and improvements to the System or to refund outstanding System Bonds; however, any such additional bonds shall not be issued on a parity with the bond unless and until there shall have been procured and filed in the office of the City Recorder (a) a statement by an Accountant reciting the opinion that the net Revenues (net Revenues being gross Revenues less operation and maintenance expenses) for the fiscal year preceding the year in which such parity bonds are to be issued were not less than 120% of the average annual debt service requirements on all outstanding System Bonds and the bonds then proposed to be issued and (b) while the Government owns the bond, the prior written consent of the Government.

In calculating net Revenues for the preceding fiscal year in clause (a) above, there may be taken into account the Tax Revenues appropriated for and transferred to the System during that fiscal year if the City Council has appropriated at least the same amount of Tax Revenues for the System for the fiscal year in which the additional bonds are to be issued.

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.

Section 16. It is covenanted and agreed by the City with the owner of the bond 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 Bond Fund and the respective funds created by this Ordinance.

The City covenants and agrees that the owners of all System Bonds 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 bondholders realizing fully upon their security. And, if the City shall fail to proceed within 30 days after written request shall have been filed by the owner of the bond, the owner 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 Bond Fund requirement or in the performance of any of the other covenants contained herein, the owner of the bond 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 owner of the bond 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 owner of the bond 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 any System Bonds 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 owner of the bond 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 owner of the bond 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 owner of the bond may be exercised from time to time and as often as may be deemed expedient.

The owners of not less than 10% in principal amount of all System Bonds then outstanding may waive any default which shall have been remedied before the entry of final judgment or decree in

any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

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.

Section 17. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the permanent or temporary bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City covenants that the proceeds of such bonds and moneys that are deposited in the funds identified herein will not be used directly or indirectly in such manner as to cause such bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). If the temporary bonds are issued, the City agrees to make any required rebate to the United States Treasury in accordance with Section 148 of the Code with respect to the permanent bond.

(b) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of, the improvements financed by the permanent and temporary bonds or the proceeds thereof, in such manner as to cause such bonds to be "private activity bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of such bonds to make or finance loans to any person, and (ii) that while such bonds are outstanding the System and the improvements financed by such bonds will only be used by persons on a basis as members of the general public.

(c) The permanent and temporary bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of the Code. The City represents and covenants that the aggregate principal amount of its tax-exempt obligations (excluding private activity bonds within the meaning of Section 141 of the Code, except qualified 501(c)(3) bonds within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in the calendar year in which the permanent or temporary bonds are issued does not and will not exceed $10,000,000. The City further covenants and represents that (i) the aggregate principal amount of its tax-exempt obligations (not including "private activity bonds" within the meaning of Section 141 of the Code), including those of its subordinate entities, issued in the calendar year in which the permanent or temporary bonds are issued will not and shall not exceed $5,000,000, and (ii) at least 95% of the proceeds of the

temporary and permanent bonds will be expended for the cost of the construction (exclusive of costs of issuance of such bonds).

(d) The City covenants that it will take no action which would cause the permanent or temporary bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section shall prohibit investments in bonds issued by the United States Treasury.

(e) The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which any bonds (temporary or permanent) are issued, a statement concerning such bonds which contains the information required by Section 149(e) of the Code.

(f) The City covenants that it will not reimburse itself from proceeds of the permanent or temporary bonds for costs paid by the City prior to the first date any of such bonds are issued except in compliance with U.S. Treasury Regulation 1.150-2 as now or hereafter amended (the "Regulation"). This Ordinance shall constitute an "official intent" for the purpose of the Regulation.

(g) The City covenants that it will not enter into wholesale water contracts in the future with non-governmental entities or modify contracts with non-governmental entities, unless the City receives an opinion of bond counsel to the effect that such contracts or modifications would cause the bond to become a "private activity bond" within the meaning of Section 141 of the Code.

Section 18. When the bonds (temporary bonds and permanent bond) have been executed by the Mayor and City Recorder and the seal of the City impressed, they shall be delivered to the purchaser upon payment of the purchase price. The proceeds from the sale of the bonds shall be disbursed as follows:

(a) In the case of the temporary bonds, the proceeds shall be deposited as and when received in a special account of the City designated "2008 Construction Fund" (the "Construction Fund") in a bank that is a member of the Federal Deposit Insurance Corporation (the "FDIC").

(b) In the case of the permanent bond the amount necessary, if any, to pay in full the outstanding principal of and interest on any temporary bonds or to pay capitalized interest on the permanent bond shall be used for that purpose, and the balance shall be deposited, as and when received, into the Construction Fund. Moneys in the Construction Fund in excess of the amount insured by FDIC shall be continuously secured by bonds or other direct or fully guaranteed obligations of the United States of

America ("Government Obligations"), except that any moneys invested as hereafter authorized need not be so secured.

The moneys in the Construction Fund shall be disbursed solely in payment of the cost of the construction, paying necessary expenses incidental thereto and paying expenses of issuing the bonds. Disbursements shall be on the basis of checks which must be signed by the individual occupying the managing office of the System (the "Manager"), and in the case of all items of expense over which the consulting engineers (the "Engineers") shall exercise supervision (which shall include all expenses except engineering fees, legal fees and expenses pertaining to the issuance of the bonds) each check shall be accompanied by a certificate signed by the Engineers (or by a representative thereof designated by the Engineers), certifying approval thereof. The managing officer of the System shall keep records of all payments made from the Construction Fund.

When the construction shall have been completed, this fact shall be evidenced by the filing with the depository in which the Construction Fund is deposited of a certificate signed by the Manager and the Engineers, which certificate shall state the date of such completion and shall state that all obligations which are payable from the Construction Fund have been discharged. Upon receipt of the above certificate the depository with which the Construction Fund is deposited shall pay or transfer any remaining balance pursuant to the written direction or check signed by the Manager and one other person designated by the City Council and with any such remaining balance to be transferred into the Bond Fund, and applied immediately to the prepayment of the bond, in multiples of $1,000 in principal amount. Any remaining balance of less than $1,000 shall be deposited in the debt service reserve in the Bond Fund. The City shall require the depository to execute an appropriate Deposit Agreement embodying the substance of the provisions of this Section.

Section 19. (a) Moneys held for the credit of the Construction Fund shall, as nearly as may be practicable, be continuously invested and reinvested in Government Obligations, which mature or which shall be subject to redemption by the holder, at the option of such holder, not later than the date or dates when the moneys will be needed for proper disbursements.

(b) Moneys held for the credit of the debt service reserve in the Bond Fund shall be continuously invested and reinvested in Government Obligations, which shall mature, or which shall be subject to redemption by the holder thereof, not later than 10 years after the date of investment.

(c) Moneys held for the credit of any other fund may, at the option of the City, be invested and reinvested by the City in Government Obligations, which shall mature, or which shall be

subject to redemption by the holder thereof at the option of such holder, not later than the date or dates when the moneys held for the credit of the particular fund will be required for the purpose intended.

(d) Obligations so purchased as an investment of moneys in any such fund shall be deemed at all times to be a part of such fund, and the interest accruing thereon and any profit realized from such investment shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund. Earnings on moneys in the debt service reserve which causes the required level to be exceeded shall be transferred to the Bond Fund.

(e) Moneys so invested in Government Obligations need not be secured by the depository bank.

Section 20. The City 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. Such books shall be available for inspection by the owner of the bond, or the agent or the representative of the owner of the bond, at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an Accountant at least once each year unless waived in writing by the owner of the bond. If the Government is the owner of the bond, the City will furnish to the Government, or, so long as the bond remains outstanding, the City will furnish, if so requested in writing, to any other owner of the bond: (1) On or before 60 days after the close of each fiscal year 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 90 days after the close of each fiscal year (unless waived by the owner of the bond), a copy of the audit report of the Accountant. Both reports required by the last preceding sentence shall contain at least the following information:

(a) Comment regarding the manner in which the City has complied with the covenants in this Ordinance and recommendations for any changes or improvements in the operation of the System;

(b) Statement of income and expense for the System;

(c) Statement showing analysis of each fund including deposits, withdrawals and beginning and ending balances;

(d) Balance sheet for the System;

(e) 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;

(f) Names and titles of principal officers; and

(g) Schedule of the number of customers (connected and unconnected to the System) 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 owner of the bond, may have the reports made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 21. 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. While the bond is outstanding, the City agrees that it will insure, and at all times keep insured, in the amount of the actual value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State to assume the risk thereof, all above-ground structures of the System (except reservoirs, standpipes and elevated tanks) against loss or damage thereto from fire, lightning, tornado, winds, riot, strike, civil commotion, malicious damage, explosion, and against loss or damage from any other causes customarily insured against by private companies engaged in a similar type of business. 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. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Revenue Fund, and if such proceeds shall be insufficient for such purposes, the deficiency shall be supplied, first, from moneys in the Depreciation Fund, second, from moneys in the Operation and Maintenance Fund, and third, from available moneys in the Revenue Fund. Nothing herein shall be construed as requiring the City to expend any funds for reconstruction, replacement or repair of the System or for operation and maintenance of the System or for premiums on its insurance which are derived from sources other than insurance proceeds or Revenues, but nothing herein shall be construed as preventing the City from doing so.

Section 22. The provisions of this Ordinance shall constitute a binding contract between the City and the owner of the bond, and the City will at all times strictly adhere to the terms and provisions hereof and fully discharge all of its obligations hereunder. However, the owner of the bond may, from time to time, approve the adoption of supplemental ordinances for the purpose of

amending or rescinding any of the terms or provisions contained in this Ordinance or in any supplemental ordinance.

Section 23. 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 owners of the bond and the Prior Bonds, and such water facilities shall remain subject to such statutory mortgage lien until payment in full of the interest and principal of the bond and the Prior Bonds, 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 24. The owner or owners of the temporary bonds shall have all rights of the owner of the bond hereunder while the temporary bonds are outstanding.

Section 25. This Ordinance shall not create any right of any kind, and no right of any kind shall arise hereunder pursuant to it, until the bonds authorized by this Ordinance shall be issued and delivered.

Section 26. 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 27. Any references in this Ordinance to "holder," "owner" or "bondholder" shall, when appropriate, be deemed to include the registered owner of the bond.

PASSED: October 21, 2008.

APPROVED:

Mayor

ATTEST:

City Recorder

(SEAL)

CERTIFICATE

The undersigned, City Recorder of the City of Mulberry, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 2008-09, adopted at a regular session of the City Council of the City of Mulberry, Arkansas, held at the regular meeting place in said City at 7:00 p.m., on the 21st day of October, 2008, and that the Ordinance is of record in Ordinance Record Book No. 2008, Page 2008-09, now in my possession.

GIVEN under my hand and seal on this 21st day of October, 2008.

Jenny Peek
City Recorder

(SEAL)