

ORDINANCE NO. 04-39

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF SEWER FACILITIES TO SERVE THE CITY OF HIGHLAND, ARKANSAS; AUTHORIZING THE ISSUANCE OF SEWER REVENUE BONDS FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF THE CONSTRUCTION; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Highland, Arkansas (the "City"), proposes to acquire and construct a sewer system (the "construction") to serve the City and its inhabitants (as completed, the "System"); 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 it may be inspected by any interested person; and

WHEREAS, the total estimated cost of the construction, authorizing and issuing bonds and paying interest during construction is \$4,289,100 and such cost can be financed by the issuance of sewer revenue bonds in the principal amount of \$1,046,200, grant funds, a deferred loan, sales and use tax bonds (in the amount of \$1,200,000), and City funds; and

WHEREAS, the City has entered into a Loan Agreement with the United States of America (the "Government"), whereby the Government has committed to purchase \$1,046,200 in principal amount of sewer revenue bonds (the "bonds"); and

WHEREAS, the Loan Agreement provides that the bonds will bear interest at not to exceed the prevailing Government interest rate the time of loan approval (4.50%) but that upon timely written request of the City the interest rate will be the lower of the prevailing Government interest rate at the time of loan approval or the prevailing Government interest rate at the time the bonds are issued; and

WHEREAS, the City is authorized, under laws of the State of Arkansas, including the provisions of Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), to accept the offer of the Government and issue the bonds;

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

Section 1. That 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. That the offer of the Government, of par for \$1,046,200 in principal amount of bonds is hereby accepted, and the bonds are hereby sold to the Government. The Mayor is authorized and directed to make timely written request to the Government that the bonds bear interest at the lower of the prevailing Government interest rate at the time of loan approval (4.50%) or the prevailing Government interest rate at the time the bonds are issued.

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

Section 4. That under the authority of the Constitution and laws of the State of Arkansas, including particularly the Authorizing Legislation 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 Highland, Arkansas Sewer Revenue Bonds, Series 2004, are hereby authorized and ordered issued in the principal amount of \$1,046,200, the proceeds of the sale of which are necessary to finance a portion of the cost to the City of the construction, including the cost of interest during construction and necessary expenses incidental thereto and to pay the expenses of issuing the bonds. The bonds may be issued at one time or in series from time to time.

References in this Ordinance to the unqualified word "bonds" shall, unless the context requires otherwise, be deemed reference to the permanent bonds authorized and outstanding (regardless of when issued) and not to the temporary bonds authorized by Section 6(b). The bonds shall be dated as of the date of their delivery and shall bear interest at the lower of the prevailing Government interest rate at the time of loan approval (4.50% per annum) or the prevailing Government interest rate at the time the bonds are issued. Interest only shall be payable on the first and second anniversaries from the date of the bonds; principal of and interest on the bonds shall be payable in monthly amortized installments commencing 25 months from the date of the bonds and continuing monthly thereafter on the same day; provided, however, that if the bonds are dated on the 29th, 30th or 31st day of any month, each monthly payment shall be made on the 28th day of any such month. If the interest rate is 4.50%, and all the bonds are issued, the amortized monthly payments shall be in the amount of \$4,803 each. If the interest rate is lower, the monthly payments shall be in the amount necessary to amortize the bonds in 456 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 bonds, with interest, is fully paid, except that final payment of the bonds shall be due and payable not later than forty (40) years from the date of the bonds, subject to prepayment prior to maturity as provided in the face of the bonds.

The bonds will be issued in the form of a typewritten bond or bonds, registered as to both principal and interest, payable to the registered owner, or assigns, as set forth hereinafter in the permanent bond form, and shall be numbered R-1 and upwards. (Though a single bond may be issued, references herein will be to "bonds.")

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 bonds (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 any bond has been fully paid, the bond shall be canceled and delivered to the City Recorder.

The Mayor is authorized to execute the necessary writings and take the necessary action to issue the bonds, at one time or in series from time to time, within the limits set forth herein, as requested by the Government, to the end that the purposes set forth in this Ordinance may be accomplished.

Section 5. That the bonds 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 bonds are not general obligations of the City but are special obligations, the principal of and interest on which are secured by a pledge of and are payable from revenues derived from the System. The bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. (a) That the bonds shall be in substantially the following form, with conforming changes in the event that bonds are issued in series, and the Mayor and City Recorder are hereby authorized and directed to make all the recitals contained therein:

(Form of single registered bond)
(To be typewritten)

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF SHARP
CITY OF HIGHLAND
_____% SEWER REVENUE BOND
SERIES 2004

No. R-1

\$1,046,200

KNOW ALL MEN BY THESE PRESENTS:

That the City of Highland, in Sharp 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

ONE MILLION FORTY-SIX THOUSAND TWO HUNDRED 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 and second anniversaries from the date of this bond; commencing the 25th month 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, the 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 forty (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.

This bond is issued for the purpose of financing the cost to the City of constructing a sewer system to serve the inhabitants

of the City (the "construction" and as completed the "System"), costs of interest during construction and costs of authorizing and issuing the bonds and is 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 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), and pursuant to Ordinance No. _____ of the City, duly adopted and approved on the _____ day of _____, 2004 (the "Authorizing Ordinance"). Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the registered owner of this bond.

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. A sufficient amount of System revenues to pay principal and interest has been duly set aside and pledged as a special fund for that purpose, identified as the " 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 at least to provide for the payment of the reasonable expenses of operation and maintenance of the System, provide for the payment of the principal of and interest on all the outstanding bonds to which System revenues are pledged as the same become due, establish and maintain debt service reserves and 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 SECTION 265 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

(Form of Record of Payment of Advances)
RECORD OF PAYMENT OF ADVANCES

<u>Date of Advance*</u>	<u>Amount of Advance</u>	<u>Total Principal Outstanding</u>	<u>Signature of City Recorder</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

*The date of each advance shall be the interest commencement date from which the principal amount of such advance bears interest.

Section 6. (b) That, pending the preparation and delivery of the permanent and definitive bonds hereinabove authorized, temporary bonds in the aggregate principal amount of not to exceed \$871,200 may be issued for the purpose of providing construction funds immediately and in anticipation of the issuance of such permanent and definitive bonds. The temporary bonds shall be in such denominations as the Mayor shall determine, be numbered from 1 upwards, be sold at a price of 100 cents on the dollar, be dated the day of delivery, bear interest at a rate not in excess of six percent (6%) per annum and be payable two (2) years from their date. Upon delivery of the permanent and definitive bonds, the temporary bonds to the extent then outstanding, with accrued interest, shall be exchanged for, or paid from the proceeds of, the permanent and definitive bonds, and shall be canceled. The temporary bonds shall be typewritten and in substantially the following form:

(Form of Temporary Bond)
(To be typewritten)

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF SHARP
CITY OF HIGHLAND
TEMPORARY SEWER REVENUE BOND
SERIES 2004

No. _____

\$ _____

KNOW ALL MEN BY THESE PRESENTS:

The City of Highland, in Sharp County, Arkansas (the "City"), hereby acknowledges itself indebted and promises to pay to _____, or assigns, the principal sum of

_____ DOLLARS
(or the total principal amount outstanding as reflected
by the Record of Payment of Advances attached hereto)

two years from date, plus interest thereon from the date of each such advance at the rate of _____ percent per annum, payable one year from date and at maturity.

This bond is one of an issue of temporary bonds in an aggregate amount not to exceed \$1,046,200 issued for the purpose of providing construction funds in anticipation of the issuance of permanent and definitive bonds for constructing the City's sewer facilities in accordance with the Authorizing Ordinance of the City (Ordinance No. _____, adopted on _____, 2004). This bond is not a general obligation of the City but is a special obligation payable solely from the revenues of the City's Sewer System (the "System") and from a pledge of the proceeds of the permanent and definitive bonds. The City has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all times at least to provide for the payment of the reasonable expenses of operation and maintenance of the System, provide for the payment, as due, of the principal of and interest on this bond, establish and maintain debt service reserves and provide a depreciation fund, all as set forth in the Authorizing Ordinance. The City covenants and agrees that on or before the maturity date hereof, this bond, to the extent then outstanding, with accrued interest, shall be exchanged for, or paid from the proceeds of, such permanent and definitive bonds.

This bond is 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 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), and pursuant to the Authorizing Ordinance.

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

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 SECTION 265 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

This bond may be redeemed at any time prior to maturity, from funds from any source, at a price of par and accrued interest to date of redemption upon ten (10) days prior written notice by first class mail to the owner hereof.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State of Arkansas 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 Highland, Arkansas, has caused this bond to be signed by the Mayor and City Recorder and sealed with the corporate seal on this ____ day of _____, _____.

CITY OF HIGHLAND, ARKANSAS

ATTEST:

By _____ Mayor

City Recorder
(SEAL)

rates (including increases as necessary) which will provide for the maintenance of the funds hereinafter described. The rates shall never be reduced while any of the bonds are outstanding unless there is obtained from a certified public accountant not in the regular employ of the City 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 twelve (12) months less the reasonably anticipated cost of operation and maintenance for the next twelve (12) months and less the required deposits for depreciation of the System for the next twelve (12) months) will equal not less than 120% of the maximum amount that will become due in any year thereafter for principal, interest and (if any) Trustee's and Paying Agent's fees on all bonds then outstanding to which System revenues are pledged.

Section 8. That if any 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. That the Treasurer of the City shall be custodian of the gross revenues derived from the operation of the System and shall give bond for the faithful discharge of his or her duties as such custodian. The amount of the bond shall at all times be at least equal to the total funds in his or her custody at any one time or the sum of \$25,000, whichever is greater. From and after the delivery of any bonds issued under the provisions of this Ordinance, the System shall be continuously operated as a revenue-producing undertaking. All moneys received by the Treasurer shall be deposited by him or her in such depository or depositories for the City as may be lawfully designated from time to time by the City Council; provided that each depository must 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 the FDIC shall be secured by bonds or other direct or fully guaranteed obligations of the United States of America unless invested as herein authorized.

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, without the prior written approval of the holders of the bonds of this issue; 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, so long as any of the bonds are outstanding, all revenues derived from the System shall be

deposited in a fund of the City, hereby created and designated "Sewer Revenue Fund" (the "Revenue Fund").

Section 12. That, on the first business day of each month, the City shall transfer from the Revenue Fund and deposit into an account hereby created and designated "Sewer System Operation and Maintenance Fund"), to be maintained in a bank that is a member of the FDIC, an amount sufficient to provide for the operation and maintenance of the System for the then next month. Moneys held in the Operation and Maintenance Fund shall be applied to pay costs of operation and maintenance of the System. Amounts payable less frequently than monthly shall be treated as accrued on a monthly basis. Any amount in the Operation and Maintenance Fund in excess of an amount sufficient to provide for operation and maintenance of System facilities for the then current and then next fiscal year of the System may be withdrawn and deposited in the Bond Fund hereinafter created or the Depreciation Fund (hereinafter created).

Section 13. (a) That, after making the required payments into the Operation and Maintenance Fund, there shall be paid from the Revenue Fund into a special fund in the name of the City which is hereby created and designated "2004 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 bonds as they mature, and to establish a debt service reserve.

(b) There shall be paid into the Bond Fund on the first business day of each month, commencing the first month after delivery of the bonds and continuing on the first business day of each month thereafter until all outstanding bonds with interest thereon have been paid in full or provision made for such payment, a sum equal to (1) during such time as principal or interest is payable less frequently than monthly, the monthly sum equal to the then next payment due divided by the number of months between the beginning of such period and the date of such payment and (2) during such time as principal or interest is payable monthly, an amount equal to the installment of principal and interest due on the next monthly installment payment date, for the bonds, plus the additional sum of \$481. When a debt service reserve shall have been accumulated, and so long as it shall remain, in the amount equal to the least of (i) the maximum annual debt service requirements on the bonds or (ii) 1.25 times the annual debt service on the bonds or (iii) \$57,636 (the "required level"), the additional payment shall cease.

In the event that principal amount of the bonds issued is equal to less than the amount authorized hereby, or the interest is less than the rate at the time of loan approval, the required level and the monthly deposit requirement shall be reduced in proportion to such reduction.

(c) If the revenues of the System 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 Treasurer 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 bonds, but such reserve shall be reimbursed from the first available moneys in the Revenue Fund. 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 principal of and interest on all of the bonds then outstanding, the City Treasurer 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 bonds, 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, at the option of the City, either (1) be used for the prepayment or redemption of bonds prior to maturity, (2) be used for the construction of improvements and extensions to the System or (3) 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 registered 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 bonds of this issue shall be specifically secured by a pledge of all the revenues required to be placed into the Revenue Fund. This pledge in favor of the bonds 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 bonds and the City shall not be required

to make any payments into the Bond Fund until delivery of the permanent bonds 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 14. That there is hereby created a special fund in the name of the City designated the "Sewer Depreciation Fund" (the "Depreciation Fund") into which there shall be deposited on the first day of each month, commencing with the month after the month in which the debt service shall have attained the required level, the sum equal to 2% of gross revenues until the bonds are discharged.

Moneys held in the Depreciation Fund shall be used to provide for System repairs and reconstruction which cannot be provided for by current reserves and money in the Operation and Maintenance Fund.

Moneys in the Depreciation Fund in excess of those expected to be necessary for the purposes thereof shall be transferred to the Revenue Fund.

Section 15. That any surplus in the Revenue Fund after making the required deposits in the other funds as set forth in the Prior Ordinances and as set forth herein may be used:

(a) for the redemption of the bonds in the manner and upon the terms applicable to redemption prior to maturity; or

(b) for the construction of extensions, betterments and improvements to the System (including payment of the principal of and interest on bonds issued therefor but subject to the provisions herein set forth pertaining to parity bonds); or

(c) for any lawful System purpose.

Section 16. That payments from the Bond Fund shall be made by check or voucher, signed by the City Treasurer or the Mayor, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

Section 17. That the bonds paid either at or before maturity shall be canceled and shall not be reissued.

Section 18. That the principal and interest installments shall be prepayable prior to maturity as provided in the bond form in Section 6 hereof.

Section 19. That as long as any of the bonds are outstanding, the City shall not issue or attempt to issue any bonds

having or claimed to be entitled to a priority of lien on the revenues of the System over the lien securing the bonds, 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; however, any such additional bonds shall not be issued on a parity with the outstanding bonds of this issue unless and until there shall have been procured and filed in the office of the City Recorder a statement by a certified public accountant not in the regular employ of the City reciting the opinion that the net revenues (net revenues being gross revenues of the System less operation and maintenance expenses) of the System 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 bonds to which the revenues of the System are pledged and the bonds then proposed 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 bonds.

Section 20. That it is covenanted by the City with the holder of the bonds that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State of Arkansas 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 the revenues of the System and applying them to the funds created by this Ordinance.

The City covenants that the owners of the bonds (of this issue and of all bonds secured by a pledge of System revenues) shall have the protection of all the provisions of the Authorizing Legislation, and 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 thirty (30) days after written request shall have been filed by the owners of not less than ten percent (10%) in principal amount of the bonds then outstanding, any bondholder may proceed to enforce all such provisions.

If there be any default in the payment of the principal of or interest on any of the bonds of this issue, or if the City defaults in any Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance, the owners of not less than ten percent (10%) in principal amount of the bonds of this issue then outstanding, may, by proper suit, compel the performance of the duties of the officials of the City under the

laws of the State of Arkansas. And, in the case of a default in the payment of the principal of and interest on any of the outstanding bonds of this issue, any owner of the bonds of this issue then outstanding 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 bondholders 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 bonds and interest outstanding and to apply the 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 one or more owners of the bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of the outstanding bonds, and any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided. No remedy herein conferred upon or reserved to the owners of the bonds 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 owners of the bonds 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 owners of the bonds may be exercised from time to time and as often as may be deemed expedient.

The owners of not less than ten percent (10%) in principal amount of all bonds secured by System revenues and 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 any of the bonds or of any provision of this Ordinance, including reasonable attorney's fees, shall be paid by the City.

Section 21. That the City shall, so long as any of the bonds are outstanding, keep the properties of the System insured against fire and other hazards in an amount that is at least the lesser of the depreciated replacement value of the property being

insured or the outstanding principal amount of the bonds. The hazards insured against shall include fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, property damage, flood or any other hazards that may be required to protect the security. All such insurance shall be evidenced by policies which are not cancellable except upon at least twenty (20) days' written notice. Copies of all such policies shall be filed with the City Recorder.

It is further covenanted by the City with the holder or holders of the bonds that the City will maintain public liability insurance covering the City's ownership and operation of a motor vehicle or vehicles in connection with the System, with maximum liability limits of not less than \$25,000 for personal injury or death of a single person, \$50,000 for personal injury or death of more than one person in a single accident or occurrence and \$15,000 for property damage arising from a single accident or occurrence.

Section 22. (a) That 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 bonds to be subject to federal income taxation pursuant to existing laws on the date of issuance. Without limiting the generality of the foregoing, the City covenants that the proceeds of the bonds and moneys that are deposited in the funds identified herein will not be used directly or indirectly in such manner as to cause the bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

(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 bonds or the proceeds of the bonds in such manner as to cause the 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 the bonds to make or finance loans to any person, (ii) that while the bonds are outstanding the improvements financed by the bonds will only be used by persons as members of the general public and that (iii) charges for use of the System while the bonds are outstanding will be based upon rates for usage only and not by contract providing for payment without regard to quantity of use.

The City has not, and the City will not, except upon first receiving an opinion of counsel of national reputation with regard to the exemption from income tax of interest on the state and local government obligations to the effect that the exemption of interest on the bonds will not be adversely affected thereby, (a) enter into any contract for the providing of sewer services or (b) enter into any amendment of any contract (regardless of when originally entered into) for the providing of sewer services.

(c) The 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 these 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 these bonds are issued, will not exceed \$5,000,000 and (ii) at least 95% of the proceeds of the bonds will be expended for the cost of the construction (exclusive of costs of issuance of the bonds).

(d) The City covenants that it will take no action which would cause the bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code; specifically, (A) the payment of any portion of principal or interest with respect to the bonds will not be guaranteed (directly or indirectly) by the United States or any agency or instrumentality thereof, (B) none of the proceeds of the bonds (exclusive of proceeds invested for an initial temporary period until needed for the purpose for which the bonds were issued and proceeds deposited into the Bond Fund) will be invested (directly or indirectly) in federally insured deposits or accounts. 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 the bonds which contains the information required by Section 149(e) of the Code.

Section 23. That, when the bonds herein authorized (temporary bonds and permanent bonds) have been executed by the Mayor and City Recorder and the seal of the City impressed, as herein provided, 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 amount necessary to provide for the payment of interest that will become due and payable during the construction period shall be deposited in the Bond Fund; and the balance of the proceeds shall be deposited in a special account of the City designated "Construction Fund" in a bank that is a member of the FDIC.

(b) In the case of the permanent bonds the amount necessary, if any, to pay in full the outstanding principal and accrued interest to date of payment of any temporary bonds shall be used for that purpose, the amount, if any, necessary to provide for the payment of interest during the construction period shall be deposited in the Bond Fund, and the balance shall be deposited into the Construction Fund. Moneys in the Construction Fund in excess of the amount insured by the FDIC shall be continuously secured by bonds or other direct or fully guaranteed obligations of the United States of America, 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 or requisitions signed by the Mayor and the City Treasurer which shall contain at least the following information: The person, firm or corporation to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each check or requisition must be signed by the individual occupying the managing office of the System, and in the case of all items of expense over which the consulting 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 or requisition shall be accompanied by a certificate signed by the consulting engineers (or by a representative thereof designated by the consulting engineers), certifying approval thereof. In the case of requisitions, the depository shall issue its check upon the Construction Fund payable to the person, firm or corporation designated in the requisition. The depository of the Construction Fund shall be required to keep records as to all payments made on the basis of requisitions, and the managing officer of the System shall keep records of all payments made on the basis of checks.

Moneys held in the Construction Fund are to be expended solely for the construction. When the construction has 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 managing officer of the System, and the consulting engineer, 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 shall pay or transfer any remaining balance pursuant to the written direction or check signed by the managing officer of the System 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 bonds, 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.

Section 24. (a) That moneys held for the credit of the Construction Fund shall, as nearly as may be practicable, be continuously invested and reinvested in direct obligations of, or obligations the principal of and interest on which are fully guaranteed by, the United States Government ("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 shall be subject to redemption by the holder thereof not later than ten (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 25. That, in the event the office of Mayor, City Recorder, City Treasurer or City Council shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law. In this regard, if the City should ever fail to maintain the office of Treasurer, the duties of the Treasurer hereunder shall be performed by the Recorder.

Section 26. That the provisions of this Ordinance shall constitute a binding contract between the City and the registered owners of the outstanding bonds issued hereunder, and the City will at all times strictly adhere to the terms and provisions hereof and fully discharge all of its obligations hereunder. Subject to the terms and provisions contained in this Section and not otherwise, the registered owners of not less than seventy-five percent (75%) in aggregate principal amount of the bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or interest on any bond issued hereunder, or (b) a reduction in the principal amount of any bond or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of revenues other than as expressly authorized by the appropriate provisions of this Ordinance as now adopted, or (d) the creation of a privilege or priority of any bond or bonds over any other bond or bonds, or (e) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 27. That 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 28. That the provisions of this Ordinance are hereby declared to be severable, and, if any provision shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of the Ordinance.

Section 29. That references in this Ordinance to "holder" or "bondholder" shall, when appropriate, be deemed to include the registered owner of the bonds.

Section 30. That all ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 31. That it is hereby ascertained and declared that the City does not have a sewer system, and that the absence thereof serves to endanger the life, health and safety of the inhabitants and their property, and that the only practical manner in which those hazards can be eliminated is by the construction to be financed by these bonds. It is, therefore, declared that an emergency exists, and this Ordinance, being necessary for the

immediate preservation of the public peace, health and safety,
shall take effect and be in force from and after its passage.

PASSED: April 27, 2004.

APPROVED:

David Shackelford
Mayor

CERTIFICATE

The undersigned, City Recorder of the City of Highland, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 04-39, adopted at a regular session of the City Council of the City of Highland, Arkansas, held at the regular meeting place in the City at 7 o'clock p.m., on the 27 day of April, 2004, and that the Ordinance is of record in Ordinance Record Book No. _____, Page _____, now in my possession.

GIVEN under my hand and seal on this 27 day of April, 2004.

Carol Fallow
City Recorder

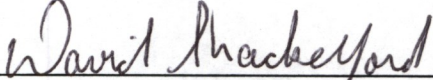
(SEAL)



NOTICE OF ADOPTION OF ORDINANCES

Notice is hereby given that the City Council of the City of Highland, Arkansas has adopted Ordinance No. 04-36, fixing rates for services rendered by the sewer system of the City, and Ordinance No. 04-39, authorizing the acquisition and construction of sewer facilities to serve the City and the issuance of sewer revenue bonds.

Copies of the Ordinances may be obtained at the office of the City Recorder.



Mayor