

ORDINANCE NO. 68

AN ORDINANCE AUTHORIZING THE CONSTRUCTION BY THE INCORPORATED TOWN OF TONTITOWN, ARKANSAS, OF BETTERMENTS, EXTENSIONS, AND IMPROVEMENTS TO ITS MUNICIPAL WATERWORKS SYSTEM TO PROVIDE PROPER WATER SERVICE TO THE USERS OF THE SYSTEM; AUTHORIZING THE ISSUANCE OF A WATER REVENUE BOND OF 1978 FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF CONSTRUCTION; PROVIDING FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON THE BOND; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, Tontitown (the "Town"), an Incorporated Town of Washington County, Arkansas, operates its own municipal waterworks system (the "System") and has determined that betterments, extensions and improvements should be constructed in order that the Town and its inhabitants and the users of the System may have proper and adequate water service, which existing System and the new betterments, extensions, and improvements to the water distribution system consisting of reconstructing water lines and facilities (the "Project") shall be added to and operated as part of the municipal System; and

WHEREAS, the Town Council has had prepared by McGoodwin, Williams and Yates, Inc., duly qualified consulting engineers of Fayetteville, Arkansas, a preliminary report, plans and specifications, and estimates of costs of the proposed Project showing an estimated cost of the project to be \$60,000 which have been examined and approved by the Town Council and a copy filed in the office of the Recorder where it may be inspected by an interested person; and,

WHEREAS, it is proposed that the total costs of the Project will be financed by the issuance by the Town of \$31,500 in a single registered 5 per cent Water Revenue Bond of 1978 (the "bond"), under the provisions of Act No. 131 of the Acts of Arkansas of 1933, as

amended; secured by a pledge of and payable from System revenues, and by a grant of \$28,500 from the Farmers Home Administration, United States Department of Agriculture; and

WHEREAS, the Town has heretofore established rates for water service which will produce System revenues at least sufficient to pay the reasonable and proper expense of operating and maintaining the System, pay debt service of and maintain a reserve in connection with the outstanding revenue bonds and this bond of the Town, and make the required depreciation deposit; and

WHEREAS, the Town has entered into a Loan Agreement with the United States of America, Farmers Home Administration (the "Government") whereby the Government has committed to lend \$31,500 to the Town to be evidenced by said Water Revenue Bond, at an interest rate of 5% per annum; now, therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TONTITOWN, ARKANSAS:

SECTION 1. That the Project be accomplished. The Mayor and Recorder are hereby authorized to take, or cause to be taken, all action necessary to accomplish the improvements and to execute all required contracts and documents.

SECTION 2. That the Town Council hereby finds and declares that the period of usefulness of the System after completion of the Project will be more than forty (40) years.

SECTION 3. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Act No. 131 of the Acts of Arkansas of 1933, as amended; a Town of Tontitown, Arkansas, single registered Water Revenue Bond is hereby authorized

and ordered issued in the principal amount of \$31,500, which shall be designated "Water Revenue Bond of 1978" (the "bond"), the proceeds of the sale of which are necessary to finance a portion of the cost to the Town of the Project, including necessary expenses incidental thereto, and to pay the expenses of issuing the bond. References in this Ordinance to the unqualified word "bond" shall, unless the context requires otherwise, be deemed reference to the single registered permanent bond authorized by this Section 3 and not to the temporary bonds authorized by Section 6 (b). The bond shall be negotiable, shall be dated as of the date of its delivery, (herein also called "the loan closing"), shall bear interest at the rate of five per cent (5%) per annum, which interest shall be payable as follows: An interest-only payment due and to be paid on the first following anniversary date of loan closing, and thereafter with the amortized installments of principal and interest on each anniversary date of the loan closing as hereinafter provided. Subject to prepayment prior to maturity, as provided in the form of bond hereinafter set forth, principal and interest shall be payable in equal annual amortized installments on each anniversary date of loan closing each year, beginning with the second anniversary date of loan closing 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.

SECTION 4. The bond shall be issued in the form of a single typewritten bond, registered as to both principal and interest, payable to the registered owner, or assigns, as set forth hereinafter in the permanent bond form.

Payment of principal and interest shall be by check or draft mailed to the registered owner thereof, without presentation or

surrender of the bond (except upon final payment) and such payments shall discharge the obligation of the Town to the extent thereof. The Town 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, on the respective dates of payment, is legal tender for the payment of debts due the United States. When the principal of and interest on the bond has been fully paid, the bond shall be canceled and delivered to the Town Recorder.

SECTION 5. The bond shall be executed on behalf of the Town by the Mayor and Town Recorder and shall have impressed thereon the seal of the Town. The bond is not a general obligation of the Town but is a special obligation, the principal of and interest on which are secured by a pledge of and are payable solely from revenue derived from the System, and a sufficient portion of which is hereby pledged to the payment of the bond, and shall be additionally secured by a statutory mortgage lien on the improvements to the water system. The bond and interest thereon shall not constitute an indebtedness of the Town within any constitutional or statutory limitation.

SECTION 6 (a). That the single registered permanent bond shall be in substantially the following form, and the Mayor and Town Recorder are hereby authorized and directed to make all the recitals contained therein:

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF WASHINGTON  
INCORPORATED TOWN OF TONTITOWN  
WATER REVENUE BOND OF 1978

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

\$31,500

KNOW ALL MEN BY THESE PRESENTS:

That the Incorporated Town of Tontitown, Washington County, Arkansas, for value received, hereby acknowledges itself to owe and promises to pay to the registered owner hereof, or assigns, solely from the special fund provided as hereinafter set forth, the principal sum of

THIRTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$31,500)

with interest on the unpaid principal balance at the rate of 5% per annum. The said principal and interest shall be payable as follows: Interest only on \_\_\_\_\_, 19\_\_\_\_; then in amortized installments of principal and interest of \$1,852.00 on \_\_\_\_\_, 19\_\_\_\_, and \$1,852.00 annually thereafter on \_\_\_\_\_ of each year until the principal and interest hereof are fully paid, except that the final payment of the entire indebtedness evidenced hereby if not sooner paid shall be due and payable not later than (40) years from the date of this bond.

Payment of the principal installments and interest 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 Town, and such payments shall fully discharge the obligation of the Town to the extent of the payments so made.

This bond is issued for the purpose of financing a portion of the cost of constructing betterments, extensions and improvements to the water distribution system (the "Project"), and the existing water facilities and new water facilities should be operated as one municipal water system (the "System"), and the costs of authorizing and issuing the bond, and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Act No. 131 of the Acts of Arkansas of 1933 (Arkansas Statutes §19-4201, et seq.), as amended, and pursuant to Ordinance No. 68 of the Town, duly adopted and approved on the 5 day of July, 1978, (The "Authorizing Ordinance").

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

This bond does not constitute an indebtedness of the Town within any constitutional or statutory limitation or provision, and the taxing power of the Town is not pledged to the payment of the principal of or interest on the bond. This bond is a special obligation payable solely from revenues derived from the operation of the System. An amount of System revenues has been duly set aside and pledged as a special fund for that purpose, identified as the "1978 Water Revenue Bond Fund", created by the Authorizing Ordinance.

The Town 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, 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 upon assignment the assignor shall promptly notify the Town Treasurer by registered mail, and the assignee shall surrender this bond to the Bond Registrar 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), prior to such surrender for transfer.

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 the 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 Incorporated Town of Tontitown, Arkansas, has caused this bond to be executed in its name by its Mayor and Recorder, thereunto duly authorized, with the manual signatures of the Mayor and Recorder, and its corporate seal to be affixed, on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

INCORPORATED TOWN OF TONTITOWN, ARKANSAS

BY \_\_\_\_\_  
MAYOR

(SEAL)

ATTEST:

\_\_\_\_\_  
TOWN RECORDER





SECTION 6 (b). Pending the preparation and delivery of the single registered permanent bond hereinabove authorized, temporary bonds in the aggregate principal amount of not to exceed \$31,500 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 Town Council shall determine, be dated the date of delivery, bear interest at the bond rate if issued to the purchaser of the permanent bond, or if issued to evidence a loan obtained on an interim basis, at such loan rate, and be payable within two (2) years from their date. Upon delivery of the permanent and definitive bond, 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. The temporary bonds shall be typewritten and be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF WASHINGTON  
INCORPORATED TOWN OF TONTITOWN  
TEMPORARY WATER REVENUE BOND

NO. \_\_\_\_\_

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

The Incorporated Town of Tontitown, Washington County, Arkansas,  
hereby acknowledges itself indebted and promises to pay to \_\_\_\_\_  
\_\_\_\_\_ at its office in \_\_\_\_\_  
County, Arkansas, the principal sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_ )

on \_\_\_\_\_, 19\_\_\_\_, plus interest thereon from the date  
hereof at the rate of \_\_\_\_\_ per cent per annum, payable annually on  
\_\_\_\_\_ in each year beginning \_\_\_\_\_ next  
following the date hereof.

This bond is one of an issue of temporary bonds in an aggregate amount not to exceed \$31,500 issued for the purpose of providing construction funds in anticipation of the issuance of a single registered permanent bond for constructing improvements to the municipal water system in accordance with the authorizing bond ordinance of the Town adopted on July 5, 1978. The temporary bonds are not general obligations of the Town but are special obligations payable solely from the revenue of the system and from a pledge of the proceeds of the single registered permanent bond. The Town covenants and agrees that on or before the maturity date hereof, this and other such temporary bonds, to the extent then outstanding, with accrued interest, shall be exchanged for, or paid from the proceeds of, said single registered permanent bond.

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 that all conditions, acts and things required to exist, to have happened and to have been performed precedent to and in the issuance of this bond do exist, have happened and have been performed in regular form, time and manner.

IN WITNESS WHEREOF, the Incorporated Town of Tontitown, Arkansas, has caused this bond to be signed by the Mayor and Town Recorder and sealed with the corporate seal on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

INCORPORATED TOWN OF TONTITOWN, ARKANSAS

BY \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Recorder

(SEAL)

SECTION 6 (c). So long as the bonds are held, or payment of principal and interest thereon is insured, by the United States of America, Farmers Home Administration, the Town shall pay and prepay each annual amortized installment of principal and interest thereon by making equal monthly payments, commencing twelve (12) months prior to the due date of such annual installment and continuing in each month thereafter until the amount of the aggregate monthly payments equals the amount of the annual installment. The amount of each monthly payment shall be applied first to the payment of accrued interest to the date of payment on the unpaid principal balance due on the bonds, and the balance shall constitute a prepayment of principal. Such prepayments shall not affect the obligation of the Town to pay and prepay subsequent annual installments as scheduled in the bonds and as provided herein and such payments shall continue until all principal of and interest on the bonds have been fully paid. To evidence the provisions of this Section 6 (c), the Mayor and Recorder are authorized and directed to execute and deliver a Supplementary Payment Agreement in substantially the following form:

SUPPLEMENTARY PAYMENT AGREEMENT

WHEREAS, the Town of Tontitown, Arkansas (the "Town"), is indebted on a loan made by the United States of America, acting through the Farmers Home Administration (the "Government"), as evidenced by a 5% Water Revenue Bond of 1978, dated \_\_\_\_\_, 19\_\_\_\_, in the principal amount of \$31,500 (the "bond"); and

WHEREAS, the bond provides for annual amortized installments of principal and interest payable on the anniversary date of the bond each year commencing \_\_\_\_\_, 19\_\_\_\_, (with interest only to be payable on each anniversary date of the bond prior thereto); and

WHEREAS, it is desirable to provide for the payment and prepayment of the annual installments of principal and interest on the bond by a supplementary plan of monthly payments.

NOW, THEREFORE, the Town does hereby agree with the Government to pay and prepay the annual installments of principal and interest on the bond by making monthly payments of \$155.00 per month, beginning the first month following the first anniversary of the loan closing date.

Each monthly payment shall be made on or before the \_\_\_\_\_ day of the month, shall be credited against the next maturing annual installment of interest, or of principal and interest, on the bond and any remaining unpaid portion of the annual installment shall be made on or before the annual installment due date shown in the bond.

The amount of each monthly payment shall be applied first to the payment of accrued interest on the unpaid principal balance due on the bond to the date of the monthly payment, and the balance

shall be applied as a prepayment of principal. Interest on the principal amount paid or prepaid shall cease to accrue as of the date of such payment or prepayment, but there shall be no reduction in the amount of the annual installment provided for in the bond or in the amount of the monthly payments provided for herein until all principal and interest on the bond have been fully paid.

Nothing herein shall be construed as affecting any of the terms or conditions of the bond except as herein expressly provided.

This Agreement shall continue so long as, and only so long as, the Government holds, or insures payment of principal and interest on, the bond, but may be canceled or amended at any time by mutual agreement in writing between the Town and the Government.

IN WITNESS WHEREOF, the Town of Tontitown, Arkansas, has caused this Agreement to be signed by the Mayor and Town Recorder thereof and sealed with the corporate seal of the Town, all as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

TOWN OF TONTITOWN, ARKANSAS

By \_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
Town Recorder

SECTION 7. That the Town has heretofore fixed water rates by Ordinance No. 67, adopted on the 9th day of February, 1978, to be charged for the services of the System and reference is hereby made to the ordinances fixing the rates for the details thereof and other provisions pertaining thereto, which rates and provisions are hereby confirmed and continued.

The Town covenants and agrees that the rates established will produce total revenues at least sufficient to pay operation and maintenance expenses of the System, pay the principal of and interest on all outstanding bonds to which System revenues are pledged, as the same become due and the Paying Agent's fees, create and maintain debt service reserves, and to make the required deposits for depreciation as specified by this Ordinance. The Town covenants always to maintain 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 Town 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) equal to not less than 120% of the maximum amount that will become due in any year thereafter for principal, interest and Paying Agent's fees on all bonds then outstanding to which System revenues are pledged.

SECTION 8. The Town further covenants and agrees that under the provisions of Section 19-4207, Ark. Stats. Ann. (Sec. 7 of said

Act 131 of 1933), there was created a statutory mortgage lien upon the improvements to the water system to be constructed from the proceeds of the bond authorized by this ordinance, and said water improvement facilities shall remain subject to said statutory mortgage lien until payment in full of the principal of and interest on said bond, and such lien may be enforced according to the provisions of said statute.

The Town further covenants and agrees that the statutory mortgage liens granted to holders of outstanding revenue bonds of the Town upon the presently existing water system and facilities of the Town shall, after said prior outstanding water revenue bonds with interest are paid in full, continue in favor of the holder or registered owner of the bond authorized by this ordinance, with all rights of enforcement thereunder provided by law.

SECTION 9. That none of the facilities or services afforded by the System shall be furnished without a charge being made therefor. In the event that the Town or department, agency or instrumentality thereof shall avail itself of the facilities and services afforded by the System, the reasonable value of the services or facilities so afforded shall be charged against the Town or such department, agency or instrumentality and shall be paid for as the charges therefor accrue. The revenue so received shall be deemed to be revenues derived from the operation of the System and shall be used and accounted for in the same manner as any other revenue derived from the operation of the System; provided, however, that nothing herein shall be construed as requiring the Town or any department, agency or instrumentality thereof to avail itself of the facilities or services afforded by the System.



SECTION 10. The Treasurer of the Town shall be custodian of the gross revenues derived from the operation of the System and shall give bond for the faithful discharge of his duties as such custodian. The amount of the bond shall be \$20,000, or at all times be at least equal to the total funds in his custody at any one time. From and after the delivery of any bond 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 in such depository or depositories for the Town as may be lawfully designated from time to time by the Town Council; subject, however, to the giving of security as now or hereafter may be required by law, and provided that each depository must hold membership in the Federal Deposit Insurance Corporation. All deposits shall be in the name of the Town 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 Federal Deposit Insurance Corporation shall be secured by bonds or other direct or fully guaranteed obligations of the United States of America unless invested as herein authorized.

SECTION 11. Water System Revenue Fund. There was continued a special fund and designated "Water System Revenue Fund", also herein called the "Revenue Fund", by Section 11 of the Town's Ordinance No. 59, passed and approved April 9, 1975, which was the Authorizing Ordinance for the Town's \$100,000 5% Water System Revenue Bond, Series 1975 ("1975 Bonds"), and the designation and name of said fund be and the same is hereby continued and all revenues derived from the operation of the System

(including those from the operation and ownership of the Project as soon as any portion thereof becomes revenue producing) shall be paid into the Revenue Fund. Revenues in the Revenue Fund shall be applied to the payment of the expenses of operation and maintenance of the System, to the payment of the principal of and interest on all outstanding bonds (with Paying Agent's fees, if any) to which System revenues are pledged, to the establishment and maintenance of debt service reserves and to the providing of a depreciation fund in the manner hereinafter set forth.

SECTION 12. Water Operation and Maintenance Fund. There shall be paid by the Treasurer from the Revenue Fund into a fund, which was continued and redesignated "Water Operation and Maintenance Fund" ("Operation and Maintenance Fund") by said Ordinance No. 59 of 1975, on the first day of the month immediately following the month in which the System or any portion thereof, becomes revenue producing, so long as any bonds of the Town payable from System Revenues are outstanding, an amount sufficient to pay the reasonable and necessary monthly expenses of operation, repair, maintenance, salaries, wages and the insuring of the System for such month and from which disbursements shall be made only for those purposes. Fixed annual charges, such as insurance premiums and the cost of major repair and maintenance expenses may be computed and set upon an annual basis and one-twelfth (1/12th) of the amount thereof may be paid into the Operation and Maintenance Fund each month.

If, in any month, for any reason there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of any deficiency shall be added to the amount otherwise required to be transferred and paid into the

Operation and Maintenance Fund in the next succeeding month. If in any fiscal year a surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount which shall be necessary to defray the reasonable and necessary cost of operation, repair, maintenance and insuring of the System during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred and deposited in the Revenue Fund.

SECTION 13. 1978 Water Revenue Bond Fund. (a) The Town covenants and agrees to maintain so long as any principal and interest on the Town's \$132,000 5% Water System Revenue Bond, Series 1971 (the "1971 Bond") is outstanding and unpaid, the presently existing "1971 Water System Revenue Bond and Interest Sinking Fund" designated as the "1971 Bond Fund", to be used exclusively for the purpose of paying the principal of and interest on the Town's 1971 Bond; to maintain so long as any principal and interest of the Town's \$100,000 Water Revenue Bond, Series 1975 (the "1975 Bond") is outstanding and unpaid, the presently existing "1975 Water Revenue Bond Fund" (also designated the "1975 Bond Fund") to be used exclusively for the purpose of paying the principal of and interest on the Town's 1975 Bond; and to create and maintain a separate fund to be designated as the "1978 Water Revenue Bond Fund" (also called "1978 Bond Fund").

(b) After making the payments into the Operation and Maintenance Fund as provided by this Ordinance, into the 1971 Bond Fund as provided by said Ordinance No. 51 of 1971, and into the 1975 Bond Fund as provided by said Ordinance No. 59 of 1975, there shall be paid by the Treasurer from the Revenue Fund into the 1978 Bond Fund the amounts of System revenues derived from water service rates which will equal the sums in the amounts and at the times hereinafter stated in Subsection (c).

(c) There shall be paid into the 1978 Bond Fund on the first business day of each month until all outstanding principal of the bond with interest thereon has been paid in full or provision made for such payment, a sum equal to one-twelfth (1/12th) of the next accruing annual installment of principal and/or interest on the bond, and the sum of \$15.00 per month, (plus any additional amount that may be necessary to fully provide for the first interest payment on the bond, if any additional amount be required), until the debt service reserve as provided for the 1978 Bond Fund shall have been accumulated in the amount of \$1,800. When the debt service reserve has been accumulated in the required amount, the monthly payments of \$15.00 into the 1978 Bond Fund may be reduced to one-twelfth (1/12th) of the next installment of interest and one-twelfth (1/12th) of the next installment of principal, respectively, but if the debt service reserve becomes impaired, the monthly payments of \$15.00 shall be resumed until the impairment is cured.

(d) 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 1978 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 1978 Bond Fund on the first business day of the next month.

(e) If, for any reason, the Town Treasurer shall fail at any time to make any of the required payments into the 1978 Bond Fund, or if for any reason the 1978 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 Revenue Fund by the increased monthly payments specified in (c) above. The debt service reserve shall be used solely as herein provided.

(f) When the moneys held in the 1978 Bond Fund, including the debt service reserve, shall be and remain sufficient to pay the principal of and interest on the bond then outstanding, the Town Treasurer shall not be obligated to make any further payments into the 1978 Bond Fund.

(g) All moneys in the 1978 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 1978 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, such surplus may be used, at the option of the Town, for the prepayment of principal or redemption of bonds prior to maturity and for the construction of improvements and extensions to the System.

(h) It shall be the duty of the Town Treasurer to withdraw from the 1978 Bond Fund at least ten (10) days before the date of any bond principal and interest payment hereunder and to pay to the registered owner an amount equal to the amount of such bond principal and interest payment (less any amounts previously paid under the Supplementary Payment Agreement provided in Section 6 (a) of this Ordinance), for the sole purpose of paying the same, and no withdrawal of funds from the 1978 Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance. Such

deposits shall be at the sole risk of the Town and shall not operate as a payment of the bond or interest until so applied.

(i) The bond of this issue shall be specifically secured by a pledge of all the revenues required to be placed into the 1978 Bond Fund. This pledge in favor of the bond is hereby irrevocably made according to the terms of this Ordinance, and the Town and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

SECTION 14. Water Depreciation Fund. After making the required payment into the Operation and Maintenance Fund and making the payments into the 1971 Bond Fund, the 1975 Bond Fund, and the 1978 Bond Fund, there shall be paid by the Treasurer from the Revenue Fund into a fund, which was continued and redesignated "Water Depreciation Fund", ("Depreciation Fund") by said Ordinance No. 59 of 1975, on the first business day of each month, commencing with the month immediately following the month in which the System, or any portion thereof, becomes revenue producing, while any of the 1971 or 1975 bonds are outstanding an amount equal to 2% of the gross revenues of the System for the preceding month until there is accumulated an amount of \$3,000, plus such additional amount as may be necessary to meet estimated needs for the current and next succeeding year. So long as the required amount is maintained, payments into the Depreciation Fund may cease but shall be resumed as necessary to maintain the required amount of paying the cost of necessary replacements made necessary by the depreciation of the System or for the cost of economically justifiable extensions to the distribution system; provided, however, that moneys in the Depreciation Fund may be used to the extent necessary to prevent a default in the payment of the principal of and interest on outstanding

bonds as the same become due and to maintain the debt service reserve in the required amount.

If in any fiscal year a surplus shall be accumulated in the Depreciation Fund over and above the required amount, such surplus may be transferred and paid into the Revenue Fund.

SECTION 15. Any surplus in the Revenue Fund, after making full provision for the other funds hereinabove provided for, may be used, at the option of the Town, for the redemption of bonds prior to maturity in accordance with the redemption provisions herein set forth, for betterments and improvements to the System, or for any other lawful municipal purpose.

SECTION 16. Payments from the respective funds shall be made by check or voucher, signed by the Town Treasurer and the Mayor, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

SECTION 17. The System shall be operated on a calendar year basis, beginning January 1 and ending December 31 of each year.

SECTION 18. The principal of the bond shall be subject to prepayment prior to maturity as provided in the bond form in section 6 hercof.

SECTION 19. As long as any portion of principal of the bond is outstanding, the Town 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 bond of this issue, 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 Town 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 bond of this issue unless and until

there shall have been procured and filed in the office of the Town Recorder a statement by a certified public accountant not in the regular employ of the Town 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 (principal, interest and Paying Agent's fees) 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 19, 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 herein authorized.

SECTION 20. It is covenanted and agreed by the Town with the holder 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 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 respective funds herein created.

SECTION 21. The Town will keep in compliance with Act 148 of the 1973 Acts of Arkansas (Sections 19-5201, et seq. Ark. Stats.) 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 Town, 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 holder of the bond, or the agent or the representative of any bondholder, at reasonable times and under reasonable circumstances. The Town agrees to have these records audited by an independent certified public accountant at least once each year. If the United States of America holds the bond, the Town will furnish to the United States of America, or, so long as any principal or interest of the bond remains outstanding, the Town will furnish, if so requested, in writing, to the bondholder or registered owner, a copy of this audit. In the event the Town fails or refuses to furnish or cause such audit to be furnished, any holder or registered owner of the bond, may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

SECTION 22. The Town 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 Town 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 of Arkansas to assume the risk thereof, all properties of the System 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 Town 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 Town to expend any funds for operation and maintenance of the System or for premiums on its insurance which are derived from sources other than the operation of the System, but nothing herein shall be construed as preventing the Town from doing so.

SECTION 23. So long as the bond is outstanding, the Town covenants and agrees that it will not mortgage, pledge, or otherwise encumber the System or any part thereof, including any and all betterments and improvements thereto or any revenues therefrom, except as herein provided, and will not sell, lease, or otherwise dispose of any substantial portion of the same. To the end that a record of the pledge of the revenues and of the agreement not to mortgage the System may be preserved, the Town Recorder is hereby authorized and directed to file with the County Recorder of Washington County, Arkansas, a copy of this Ordinance duly certified, with instructions that the same be recorded in the office of the County Recorder as in the case of deeds and mortgages.

SECTION 24. (a). If there be any default in the payment of the principal of or interest on the bond, or if the Town defaults in any 1978 Bond Fund requirement or in the performance of any of the other covenants contained and set forth in this Ordinance, the holder or registered owner, may by proper suit compel the performance of the duties of the officials of the Town as set forth in Arkansas Acts 1933, No. 131, as amended, and in this Ordinance, and, in the case

of a default in the payment of the principal of and interest on the outstanding bond, or if the Town fails to comply with any other obligation which it herein assumes, the holder or registered owner may appear in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the Town and the bondholder or registered owner 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 and maintenance and to pay any bonds and interest outstanding and to apply the revenue in conformity with the provisions of Arkansas Act No. 131 of 1933, as amended, and 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 Town.

(b) It is understood and intended that no holder or registered owner of the bond hereby secured shall have any right in any manner whatever by his or its action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all holders or registered owners of the outstanding bonds and coupons, and that any individual rights of action or other right given to such holder or registered owner by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) No remedy conferred upon or reserved to the holder or registered owner of the bond is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be

cumulative and shall be in addition to every other remedy given hereunder or available under the law.

(d) No delay or omission of any holder or registered 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 such default or any acquiescence therein; and every power and remedy given by this Ordinance to the holder and registered owner of the bond, respectively, may be exercised from time to time and as often as may be deemed expedient.

(e) The holder or registered owner of the bond 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.

SECTION 25. That when the bond herein authorized (temporary bonds and permanent bonds) have been executed by the Mayor and Town Recorder and the seal of the Town impressed, as herein provided, they shall be delivered to the lender upon delivery of the loan proceeds. The proceeds from the loans shall be disbursed as follows:

(a) In the case of the temporary bonds, the amount necessary to provide for the payment of interest during the construction period shall be deposited in the 1978 Bond Fund and the balance of the proceeds shall be deposited in a special account of the Town designated "Water Construction Fund" (the "Construction Fund") in a bank that is a member of the Federal Deposit Insurance Corporation and used for the payment of the costs of construction and paying necessary expenses incidental thereto, including legal and engineering fees and expenses.

(b) In the case of the permanent bond, 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, and the balance shall be deposited into the Construction Fund and used for the accomplishment of the improvements and the payment of expenses incurred by the Town in authorizing, selling and issuing the bond that has not been accomplished and paid with the temporary bond proceeds. Moneys in the Construction Fund in excess of the amount insured by the Federal Deposit Insurance Corporation 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 hereinafter 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, paying expenses of issuing the bond and paying interest on the bond during construction. Disbursements shall be on the basis of checks or requisitions 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, expenses pertaining to the issuance of the bond and interest during construction) 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.

When the construction of the Project 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 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 with which the Construction Fund is deposited 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 Town Council with any such remaining balance to be transferred into the 1978 Bond Fund, and if such balance amounts together with the present debt service reserve in the 1971 Bond Fund in excess of \$7,900 and in excess of the \$1,800 debt service reserve of the 1978 Bond Fund, such excess shall be immediately applied to the prepayment of principal of the bond prior to maturity. The Town shall require the depository to execute an appropriate Deposit Agreement embodying the substance of the provisions of this Section 25.

SECTION 26 (a). Moneys held for the credit of the Construction Fund which exceed the estimated disbursements on account of the project for the next ninety (90) days shall, as nearly as may be

practicable, be continuously invested and reinvested in direct obligation of, or obligations the principal of and interest on which are fully guaranteed by, the United States Government, which mature not later than eighteen (18) months after the date of such investment and which shall be subject to redemption at any time by the holder or registered owner thereof.

(b) Moneys held for the credit of the debt service reserve in the 1978 Bond Fund shall 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, which shall mature, or which shall be subject to redemption by the holder or registered owner thereof, at the option of such holder or registered owner, 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 Town, be invested and reinvested by the Town in direct obligations of, or obligations the principal of and interest on which are fully guaranteed by, the United States Government, which shall mature, or which shall be subject to redemption by the holder or registered owner thereof at the option of such holder or registered owner, 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 loan resulting from such investment shall be charged to such fund. However, in the case of earnings on investments of moneys in the debt

service reserve which increase the amount thereof in excess of the required level, earnings to the extent of such excess need not be retained in the debt service reserve and may be used as any other moneys in the 1978 Bond Fund are permitted to be used pursuant to the provisions of this Ordinance, and earnings on investments of moneys in the Depreciation Fund which increase the amount thereof in excess of the required level may be treated as surplus and transferred to the 1978 Bond Fund.

(c) Moneys so invested in United States Government obligations, as above defined, need not be secured by the depository bank.

SECTION 27. That in the event the office of Mayor, Town Recorder, Town Treasurer or Town 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 Town 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 Town should ever fail to maintain the office of Treasurer, the duties of the Treasurer hereunder shall be performed by the Town Recorder.

SECTION 28. The provisions of this Ordinance shall constitute a binding contract between the Town and the holder or registered



owner of the outstanding bond, and the Town 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 holder or registered owner of the bond 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 Town 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 of 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 the bond issued hereunder, or (b) a reduction in the principal amount of the 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 bond required for consent to such supplemental ordinance.

SECTION 29. Because there is no newspaper published in the Town of Tontitown, the Mayor and Town Recorder are hereby directed to post a certified copy of this Ordinance in at least five (5) public places within the Town a notice signed by them, in substantially the following form, and attached to and preceding this Ordinance:

N O T I C E

Notice is hereby given that the Town Council of the Town of Tontitown, Arkansas, has adopted the Ordinance hereinafter set out; that the Town contemplates the issuance of a Water Revenue Bond of 1978, described in the Ordinance; that any person interested may appear before the Town Council on the 17<sup>th</sup> day of July, 1978, at 8 o'clock, P.M., at the usual meeting place of the Council held in Tontitown and present protests. At such hearing all objections and suggestions will be heard, and the Council will take such action as is deemed proper in the premises.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
TOWN RECORDER

SECTION 30. This Ordinance shall not create any right of any kind, and no right of any kind shall arise hereunder pursuant to it, until the bond authorized by this Ordinance shall be issued and delivered.

SECTION 31. 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 the Ordinance.

SECTION 32. References in this Ordinance to "holder" or "bondholder" shall, when appropriate, be deemed to include the registered owner of the bond registered as to principal or as to principal and interest.

SECTION 33. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 34. It is hereby ascertained and declared that funds are immediately necessary for financing the cost to be borne by the Town of extensions, betterments and improvements to the System in order to preserve the health and welfare of the inhabitants of the Town, and to remove the existing hazards thereto, and said improvements cannot be made without the issuance of this bond. It is, therefore, declared that an emergency exists requiring this Ordinance to take effect and be in force from and after its adoption for the preservation of the public peace, health and safety, and it is so ordained.

PASSED:

July 5, 1978

APPROVED:

*Harry Shanno*  
MAYOR

ATTEST:

*Ray W. Steadley*  
TOWN RECORDER

C E R T I F I C A T E

The undersigned, Town Recorder of the Town of Tontitown, Arkansas, hereby certifies that the foregoing pages, numbered from 1 to 35, inclusive, are a true and perfect copy of Ordinance No. 68, adopted at a special session of the Town Council of the Town of Tontitown, Arkansas, held at the regular meeting place in said Town at 8 o'clock, P.M., on the 5<sup>th</sup> day of July, 1978, and that the Ordinance is of record in Ordinance Record Book No. 1, Page 127, now in my possession.

GIVEN under my hand and seal on this 5 day of July, 1978.

Ray W. Bradley  
TOWN RECORDER

(SEAL)

CERTIFICATE OF POSTING

The undersigned, the duly elected and acting Town Recorder  
of the Incorporated Town of MONTITOWN Arkansas,  
hereby certifies that attached hereto is a true and correct copy  
of a Notice and Ordinance No. 68 adopted by the Town  
Council and posted on the 6 day of July 19 78,  
with the notice immediately preceding the Ordinance, in three (3)  
of the most public places within said Town, to-wit:

U S Post office

First State Branch Bank

Montitown News

CERTIFIED under my hand and the seal of said Town this 5  
day of July, 19 78.

Roy W. Bradley  
TOWN RECORDER