

ORDINANCE NO. 151

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A SALES AND USE TAX BOND FOR THE PURPOSE OF FINANCING THE COST OF A SEWER SYSTEM; PLEDGING A 0.5% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the City Council of the City of Bethel Heights, Arkansas that:

Section 1. Certain terms used herein are defined in the bond form appearing in Section 5 of this Ordinance; other terms used herein shall have the following definitions:

"Accountant" means an independent certified public accountant not in the regular employ of the Issuer.

"Authorized Officers" means Fred Jack, Mayor, and Thomas Dee, City Recorder, or successors.

"Bond" means City of Bethel Heights, Arkansas Sales and Use Tax Bond, Series 2003 authorized by this Ordinance in the Principal Amount.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the Arkansas Soil and Water Conservation Commission, or its successor and assigns.

"Construction Fund" means a special fund created by this Ordinance and designated "Sales and Use Tax Bond Construction Fund, Series 2003."

"Debt Service Reserve Amount" means \$71,066.00.

"Memorandum of Agreement" means the Memorandum of Agreement between the Issuer and the Commission, No. 00298-CGO-L, dated July 18, 2003, as now or hereafter revised.

Section 2. The Improvements shall be accomplished. Acquiring, constructing and equipping the Improvements as more specifically described in the report prepared by the Project Consultant are hereby approved, authorized and directed. The Authorized Officers 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, including, but not limited to, the Memorandum of Agreement and a Non-Arbitrage Certificate.

Section 3. (a) Under the authority of the laws of the State of Arkansas, including particularly Amendment No. 62 to the Arkansas Constitution and the Act, the issuance of the Bond is hereby authorized and the Bond is ordered issued for the purpose of providing a portion of the funds for accomplishing the Improvements, funding a debt service reserve, paying a servicing fee to the Commission, and paying necessary expenses incidental thereto and to the issuance of the Bond.

(b) The Bond shall be initially dated the date of original issuance and delivery, shall mature on the Maturity Date and shall bear interest from the Date of Issue at the Interest Rate.

(c) The Bond shall be issuable only as a fully registered Bond without coupons in one denomination and shall be numbered "R-1".

(d) The Trustee is designated to act for the Registered Owner.

(e) The Bond, upon subsequent transfer, shall be exchanged for a new Bond dated as of the Payment Date to which interest has been paid, or if it is transferred prior to a date on which any interest has been paid, it shall be dated the Date of Issue. Principal and interest on the Bond shall be payable on the Payment Dates. Payment of each installment of principal and interest (except final payment) shall be made to the person in whose name the Bond is registered on the registration books of the Issuer maintained by the Trustee, as bond registrar, at the close of business on the Record Date, irrespective of any transfer or exchange of such Bond subsequent to such Record Date, and prior to such Payment Date, by check or draft mailed by the Trustee to such Registered Owner, at his address on such registration books. Final payment of principal of the Bond

shall be payable at the principal corporate trust office of the Trustee.

(f) Only such Bond as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth herein duly executed by the Trustee shall be entitled to any right or benefit hereunder. No Bond shall be valid and obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed by the Trustee, and such certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder.

(g) In case the Bond shall become mutilated or be destroyed or lost, the Issuer shall cause to be executed and the Trustee may authenticate and deliver a new Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the Registered Owner paying the reasonable expenses and charges of the Issuer and Trustee in connection therewith, and, in the case of, the Bond being destroyed or lost, his filing with the Trustee evidence satisfactory to it that the Bond was destroyed or lost, and of his ownership thereof, and furnishing the Issuer and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. Upon the issuance of a new Bond under this Section, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(h) The Issuer shall cause to be maintained books for the registration and for the transfer of the Bond as provided herein and in the Bond. The Trustee shall act as the bond registrar. The Bond is transferable only at the principal office of the Trustee by the Registered Owner thereof or by his attorney duly authorized in writing. Upon such transfer the ownership of the Bond shall be registered to the subsequent Registered Owner, and a new fully registered Bond of the same maturity, for the same Principal Amount, less the amount of partial redemption, if any, will be issued in exchange therefor to the subsequent Registered Owner.

(i) No charge shall be made to any Registered Owner of any Bond for the privilege of transfer, but any Registered Owner of the Bond requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Bond upon each transfer and any other expenses of the Issuer or the Trustee incurred in connection therewith, shall be paid by the Issuer.

(j) The person in whose name the Bond shall be registered shall be deemed and regarded as the absolute Registered Owner thereof for all purposes, and payment of or on account of the principal or interest on the Bond shall be made only to or upon the order of the Registered Owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid. Neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

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

(l) The Bond shall be executed on behalf of the Issuer by the manual signatures of the Authorized Officers and the seal of the Issuer shall be affixed thereto.

Section 4. The sale of the Bond to the Commission pursuant to the Memorandum of Agreement for the purchase price of par is hereby authorized subject to the Interest Rate, Maturity Date and other terms and provisions set forth in detail herein. The Memorandum of Agreement, in substantially the form submitted to this meeting, is hereby approved. The Mayor is hereby authorized and directed to execute and deliver the Memorandum of Agreement on behalf of the Issuer and to take all action required on the part of the Issuer to fulfill its

obligations under the Memorandum of Agreement. The Mayor is further authorized and directed to execute and deliver any necessary revision to the Memorandum of Agreement on behalf of the Issuer in order to modify any provisions thereof to conform to the terms of this Ordinance.

Section 5. The Bond and the Trustee's Certificate of Authentication shall be in substantially the following form and the Authorized Officers are hereby expressly authorized and directed to make all recitals on behalf of the Issuer contained therein:

(Form of Bond)

REGISTERED

REGISTERED

No. R-1

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

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF BENTON  
CITY OF BETHEL HEIGHTS  
SALES AND USE TAX BOND  
SERIES 2003

As used in this Bond the following terms shall have the following definitions:

"Act" means Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated.

"Bond Fund" means a special fund which has been created by the Issuer's Authorizing Action and is designated "2003 Sales and Use Tax Bond Fund."

"Date of Issue" means the date the Bond is issued and delivered to the original purchaser, which is \_\_\_\_\_, 2003.

"Dated Date" means the Date of Issue or, if this Bond is exchanged and registered to a subsequent Registered Owner, the Payment Date immediately prior to such exchange or registration.

"Improvements" means the sewer system being financed to serve the Issuer.

"Interest Rate" means 3.75%.

"Issuer" means City of Bethel Heights, Arkansas.

"Issuer's Authorizing Action" means City of Bethel Heights, Arkansas Ordinance No. 151 duly adopted and approved by the Issuer on July 22, 2003.

"Maturity Date" means December 1, 2033.

"Payment Date" means June 1, 2004 and every June 1 and December 1 thereafter.

"Payment Schedule" means an amount sufficient to discharge the Principal Amount by the application of equal semiannual payments, payable on June 1 and December 1, during the period from the Date of Issue to the Maturity Date. Upon disbursement of the entire Principal Amount, it shall be an amount equal to principal in the amount of \$11,657.30 plus interest accrued from the Date of Issue to June 1, 2004 and, thereafter, equal semi-annual installments of \$35,533 on each Payment Date to and including June 1, 2033 and the sum of \$35,518.67 on December 1, 2033.

"Principal Amount" means \$1,273,400 or such lesser amount as may be reflected on the Schedule of Advances attached to the Bond.

"Project Consultant" means Engineering Design Associates.

"Record Date" means the 15th day of the month (whether or not a business day) next preceding each Payment Date.

"Redemption Schedule" means the following schedule for optionally redeeming this Bond on the Redemption Dates at the Redemption Price (expressed as percentages of the Principal Amount) set forth in the following schedule, together with accrued interest to the Redemption Date:

<u>Redemption Dates</u> <u>(Dates Inclusive)</u>	<u>Redemption Price</u>
Prior to July 1, 2013	No Redemption
July 1, 2013 and thereafter	Par

"Tax" means the Issuer's 0.50% sales and use tax levied by the Issuer under the laws of the State of Arkansas and approved by the electors of the Issuer on July 1, 2003.

"Trustee" means Regions Bank, Little Rock, Arkansas.

KNOW ALL MEN BY THESE PRESENTS:

That the Issuer, for value received, hereby promises to pay, by check or draft, to the order of Arkansas Soil and Water Conservation Commission or registered assigns (collectively, the "Registered Owner"), at the principal office of the Trustee, the Principal Amount with interest thereon, at the Interest Rate per annum shown above, in such coin or currency from the Dated Date hereof, payable as provided in the Payment Schedule until payment in full of such Principal Amount or, if this Bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent allowed by law) at the rate borne by this Bond. Payments shall be first applied to accrued interest and the balance thereof shall be applied to principal. Payment shall be made to the person in whose name this Bond is registered on the registration books of the Issuer maintained by the Trustee at the close of business on the Record Date, irrespective of any transfer or exchange of this Bond, subsequent to the Record Date and prior to such Payment Date.

This Bond is issued for the purpose of financing and paying a portion of the costs of the Improvements, paying a servicing fee to the Arkansas Soil and Water Conservation Commission, funding a debt service reserve and paying necessary expenses incidental thereto and to the issuance of this Bond.

This Bond is issued pursuant to and in full compliance with provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment No. 62 to the

Arkansas Constitution and the Act, and pursuant to the Issuer's Authorizing Action and a special election held on July 1, 2003 at which a majority of the electors voting on the question approved the issuance of the Bond. This Bond does not exceed any constitutional or statutory limitation.

This Bond is not a general obligation of the Issuer but is a special obligation of the Issuer payable solely from proceeds derived by the Issuer from the collection of the Tax (the "Pledged Revenues").

An amount of Pledged Revenues sufficient to pay the principal of and interest on this Bond has been duly pledged and set aside as a special fund for that purpose and will be deposited from time to time into the Bond Fund created pursuant to the Issuer's Authorizing Action, under which this Bond is authorized to be issued. Reference is hereby made to the Issuer's Authorizing Action for a detailed statement of the terms and conditions upon which this Bond is issued, of the nature and extent of the security for this Bond, and of the rights and obligations of the Issuer, the Trustee and the Registered Owner.

This Bond is subject (a) to mandatory redemption, in whole or in part, at par from bond proceeds not used for the purposes intended on the first Payment Date following the date of the Project Consultant's completion certificate, (b) by mandatory redemption, in whole or in part, to the extent of collections of the Tax in excess of amounts necessary to ensure the payment of principal of and interest on the Bonds as due, and (c) to redemption at the option of the Issuer, pursuant to the Redemption Schedule. Notice of redemption identifying portions of this Bond to be redeemed shall be given by the Trustee, not less than 15 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to the Registered Owner. In the event of partial redemption, prepayments shall be applied in inverse order of maturity, the length of the Payment Schedule shall be reduced accordingly and the amount due on each Payment Date shall not be reduced.

This Bond is transferable by the Registered Owner hereof only as provided in the Issuer's Authorizing Action. The Issuer and the Trustee may deem and treat the Registered Owner



as the absolute owner hereof for the purpose of receiving payment of principal and interest due hereon and for all other purposes, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Issuer's Authorizing Action until it shall have been authenticated by execution of the Certificate of Authentication hereon duly signed by the Trustee. This Bond is issued with the intent that the laws of the State of Arkansas shall govern its construction.

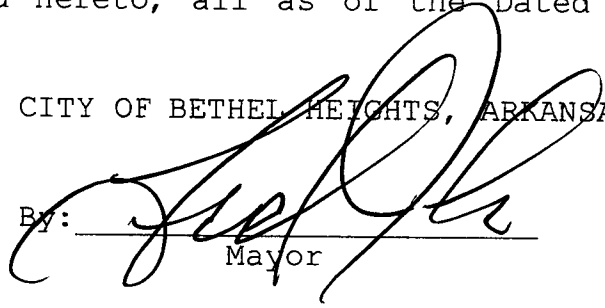
IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed under the Constitution and laws of the State of Arkansas, precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law; and that the Pledged Revenues have been pledged in accordance with the Act sufficient to pay this Bond and interest hereon until this Bond and interest hereon have been fully paid and discharged.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed by the undersigned Authorized Officers and its corporate seal to be affixed hereto, all as of the Dated Date shown above.

CITY OF BETHEL HEIGHTS, ARKANSAS

ATTEST:

  
\_\_\_\_\_  
City Recorder

By:   
\_\_\_\_\_  
Mayor



TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is issued under the provisions of the within mentioned Issuer's Authorizing Action.

REGIONS BANK  
Little Rock, Arkansas  
TRUSTEE

By: \_\_\_\_\_  
Authorized Signature

Section 6. Principal of and interest on the Bond shall be payable according to the Payment Schedule.

Section 7. The Issuer hereby expressly pledges and appropriates all of the revenues derived by the Issuer from the Tax (the "Pledged Revenues") to the payment of the principal of and interest on the Bond when due and to the payment of the fees and charges of the Trustee. The Issuer covenants that the Tax shall never be repealed or reduced while the Bond is outstanding. The Issuer further covenants to use due diligence in collecting the Tax. Nothing herein shall prohibit the Issuer from increasing the Tax from time to time, to the extent permitted by law, and no part of the revenues derived from any such increase shall become part of the Pledged Revenues.

Section 8. (a) The Bond Fund is hereby established and created as a trust fund with the Trustee. There is also hereby established, by the deposits specified below, a separate trust account in the Bond Fund which is designated "Debt Service Reserve Account" (the "Debt Service Reserve"). Moneys in the Bond Fund shall be used in the following order of priority as and when necessary solely for the following purposes:

- (1) to pay the Trustee's fees and expenses;
- (2) to pay principal and interest on the Bond;
- (3) to fund the Debt Service Reserve, by monthly deposits, to the Debt Service Reserve Account, and to maintain or restore the Debt Service Reserve as specified in subsection (d) below; and
- (4) to redeem prior to maturity principal of the Bond and of additional bonds.

(b) Except to the extent permitted as set forth above in this Section, the City Treasurer shall pay to the Trustee for deposit into the Bond Fund, and for payment of Trustee's fees, as received, all Pledged Revenues. Monthly payments shall continue to be made into the Bond Fund until the Bond with interest thereon have been paid in full or provision is made for such payment.

(c) If the Pledged Revenues are insufficient to make the required payment on the first business day of the month into the Bond Fund, the amount of any such deficiency in the payment

SCHEDULE OF ADVANCES

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

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

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) The Debt Service Reserve shall be used solely and for no other purpose than the payment of the principal of and interest on the Bond in the event there are insufficient moneys in the Bond Fund on any payment date for that purpose. The Debt Service Reserve shall be maintained in an amount equal to the Debt Service Reserve Amount. If for any reason there shall be a deficiency in the Bond Fund so that there is unavailable sufficient money therein to pay the principal of and interest on the Bond as same become due, any sums then held in the Debt Service Reserve shall be used to the extent necessary to pay such principal of and interest on the Bond, but if a payment is made for such purpose out of the Debt Service Reserve it shall be reimbursed from the first available Pledged Revenues remaining after the regular monthly payments have been made into the Bond Fund.

(e) When the moneys held in the Bond Fund shall be and remain sufficient to pay the principal of and interest on the Bond then outstanding and Trustee's fees in connection therewith, there shall be no obligation to make further payments into the Bond Fund. Any amount in the Debt Service Reserve in excess of the Debt Service Reserve Amount shall be credited against the next monthly Bond Fund payment.

(f) If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments during the succeeding 12 months on the Bond, with Trustee's fees, such surplus shall be applied to the prepayment of the principal of the Bond as set forth in subsection (a), above. All moneys deposited in the Bond Fund (excluding the Debt Service Reserve) shall be expended within a thirteen-month period beginning on the date of deposit, and any amount received from investment of money held in the Bond Fund shall be expended within one year from the date of receipt and in any event all money in the Bond Fund in excess of a carryover amount not to exceed the greater of (A) one year's earnings on the Bond Fund, or (B) 1/12 of the annual debt service on the Bond, shall be depleted at least once a year as provided in this Section.

(g) In addition to other security pledged herein, the Bond shall be specifically secured by a pledge of all Pledged Revenues required to be placed into the Bond Fund. The pledge in favor of the Bond is hereby irrevocably made according to the terms hereof, and the Issuer and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions hereof.

(h) When the Bond shall have been paid in full within the meaning hereof, the Trustee shall take all appropriate action to cause (i) the pledge and lien hereof to be discharged and canceled, and (ii) all moneys held by it pursuant hereto and which are not required for the payment of the Bond and Trustee's fees to be paid over or delivered to or at the direction of the Issuer.

Section 9. All Pledged Revenues remaining after making the required deposit into the Bond Fund shall be released from the pledge of this Ordinance and may be used by the Issuer for any lawful purpose.

Section 10. (a) When the Bond has been executed and sealed by the Authorized Officers, it shall be delivered to the Trustee, which shall authenticate it and deliver it to the Arkansas Soil and Water Conservation Commission upon payment of the Principal Amount, as defined in Section 5, above. At the time of last advance, a servicing fee of \$38,202.00 shall be paid to the Commission. All advances shall be deposited in the Construction Fund, which is hereby created with the Trustee.

(b) The moneys in the Construction Fund shall be used for accomplishing the Improvements, paying expenses incidental thereto and paying expenses of issuing the Bond, with any unexpended balance to be deposited in the Bond Fund. Disbursements shall be made from the Construction Fund on the basis of consecutively numbered written requisitions which shall specify: the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; the purpose of the payment; and that the payment is a proper charge on the Construction Fund. If any such payment is a reimbursement to the Issuer for funds expended prior to the Date of Issue, the Issuer shall certify that it has complied with the United States Treasury Regulation No. 1.150-2. Each requisition must be signed by an agent of the Registered Owner, an Authorized

Officer and, in case of work over which the Project Consultant shall exercise supervision, an agent of the Project Consultant, and the check drawn upon the Construction Fund shall be payable to the person, firm or corporation designated in the requisition. The Trustee shall be required to keep records of all requisitions reflecting all payments made from the Construction Fund.

(c) When the Improvements have been completed and all required expenses paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof, this fact shall be evidenced by a certificate signed by an Authorized Officer and an agent of the Project Consultant which certificate shall state, among other things, the date of the completion and that all obligations payable from the Construction Fund have been discharged (the "Completion Certificate"). A copy of the Completion Certificate shall be filed with the Trustee and upon receipt thereof the Trustee shall transfer any remaining balance to the Bond Fund.

Section 11. (a) Moneys held for the credit of the Bond Fund and the Construction Fund shall be invested and reinvested pursuant to the direction of the Issuer, and, in the Trustee's discretion in the absence of any instructions from the Issuer, in Government Securities (which for purposes hereof are hereby defined to mean direct or fully guaranteed obligations of the United States of America), in certificates of deposit of banks, including the Trustee, which are insured by the Federal Deposit Insurance Corporation ("FDIC"), or, to the extent insured by FDIC, are collateralized by Government Securities or other securities authorized by Arkansas law to secure public funds, or in other investments as may, from time to time, be permitted by law and approved by the Registered Owner, which shall mature, or which investments shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended; provided, however, that investments of moneys in the Debt Service Reserve shall mature not later than ten years after the date of the investment.

(b) Obligations so purchased as an investment of moneys in any 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 investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund.

(c) Moneys so invested in Government Securities or certificates of deposit of banks to the extent insured by FDIC need not be secured by the depository bank or banks. Except as set forth in the preceding sentence, all deposits of Pledged Revenues shall be collateralized by the pledge of Government Securities in such a manner as to be perfected against the claims of innocent creditors under the Financial Institution Reform, Recovery and Enforcement Act of 1989 and the Arkansas Uniform Commercial Code.

(d) In determining the value of the Bond Fund, the Trustee shall credit investments at the market value thereof, as determined by the Trustee by any method selected by the Trustee in its reasonable discretion. No less frequently than annually, and in any event on December 31 each year, the Trustee shall determine the value of each such fund and shall report such determination to the Issuer and the Registered Owner. The Trustee shall sell or present for redemption any investments as necessary to provide money for the purpose of making any payment required hereunder. The Trustee shall not be liable for any loss resulting from any such sale.

Section 12. (a) The Bond shall be subject to mandatory and optional redemption prior to maturity in accordance with the terms set out in the bond form herein. The Issuer hereby covenants to use Bond proceeds not necessary for the purposes intended to redeem the Bond at par on the first Payment Date following the date of the Completion Certificate.

(b) The Bond shall be deemed paid when (1) there has been deposited with the Trustee an amount sufficient to pay the principal or redemption price of and interest on the Bond to the Maturity Date or redemption, plus all fees of the Trustee, or (2) there has been deposited with the Trustee, Government Securities that mature according to their terms and are non-callable or redeemable at the option of the holder thereof on or prior to the Maturity Date or redemption of the Bond and the principal or redemption price of and interest on which, together with any moneys on deposit with the Trustee, will provide an amount sufficient to pay in full the principal or redemption



price of and interest on the Bond when due plus the fees of the Trustee; provided that such deposit will not affect the tax exempt status of the interest on the Bond or cause the Bond to be classified as an arbitrage bond within the meaning of Section 148 of the Code, and provided further, that if the Bond is to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given as provided in the Bond Form. If the Bond is called for redemption and funds are duly provided in accordance with this Ordinance prior to the date fixed for redemption, the Bond will cease to bear interest on such redemption date. Prepayment of less than all outstanding principal shall be applied in inverse order of maturity.

(c) In determining the sufficiency of the deposit there shall be considered the principal amount of such Government Securities and interest to be earned thereon until the maturity of such Government Securities.

(d) On the payment in full of the Bond within the meaning hereof, the Trustee shall hold in trust, for the benefit of the Registered Owner, all such moneys and/or Government Securities.

(e) The Bond paid either at or before maturity shall be cancelled and shall not be reissued.

Section 13. So long as the Bond is outstanding, it is hereby covenanted and agreed by the Issuer with the Registered Owner that:

(a) The Issuer covenants and agrees that without the prior written consent to the Registered Owner, it will not issue any additional bonds, or incur any additional obligations, either (i) secured by a prior lien on or pledge of the Pledged Revenues or (ii) on a parity of security with the pledge of Pledged Revenues in favor of the Bond.

(b) The Issuer covenants and agrees that it will faithfully and punctually perform all duties with reference to the Tax, the Pledged Revenues and the Bond, and apply the Pledged Revenues as required herein and by the Constitution and laws of the State of Arkansas.

(c) The Issuer covenants and agrees that it will forthwith proceed to construct the Improvements for which the Bond shall be issued in accordance with plans and specifications which shall have been approved by the Project Consultant, and in conformity with law and all requirements of all governmental authorities having jurisdiction thereover, and that it will expeditiously complete such construction.

Section 14. The Issuer shall cause proper books of accounts and records to be kept (separate from all other accounts and records) in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues and the Tax, and such books shall be available for inspection by the Registered Owner at reasonable times and under reasonable circumstances. The Issuer agrees to provide the Trustee and Registered Owner with a report of the Pledged Revenues collected each year no later than sixty days after the end of the year. In addition, the Issuer agrees to have its records audited by an Accountant or by the Joint Legislative Auditing Committee, Division of Legislative Audit of the State of Arkansas at least once each year, and a copy of the audit shall be delivered to the Trustee and the Registered Owner no later than thirty days it is received by the Issuer.

Section 15. (a) If there be any default in the payment of the principal of and interest on the Bond, or if the Issuer defaults in the performance of any covenant contained herein, the Trustee or the Registered Owner may, by proper suit compel the performance of the duties of the officials of the Issuer hereunder and under the Constitution and laws of the State of Arkansas, and may take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State of Arkansas.

(b) No remedy herein conferred upon or reserved to the Trustee or to the Registered Owner is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law or by the Constitution of the State of Arkansas.

(c) No delay or omission of the Trustee or of the Registered Owner 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 an acquiescence therein, and every power and remedy given hereby to the Trustee and to the Registered Owner, respectively, may be exercised from time to time and as often as may be deemed expedient.

(d) The Trustee may, and upon the written request of the Registered Owner shall, 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 hereof 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.

(e) Any costs of enforcement of the obligations of the Issuer hereunder, including reasonable attorney's fees, shall be paid by the Issuer and shall constitute obligations of the Issuer hereunder.

Section 16. In the event that the City Council or the office of the Authorized Officers shall be abolished or any offices shall be merged or consolidated or in the event the duties of a particular office shall be transferred to another officer or officers, 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 Issuer or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officers succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 17. The Trustee shall be responsible for the exercise of good faith and ordinary prudence in the execution of its respective trusts. The recitals herein and in the face of the Bond are the recitals of the Issuer and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the Registered Owner and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by thirty days' notice in writing to the Authorized Officers and

the Registered Owner, and the Registered Owner at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the Registered Owner may appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the Authorized Officers. If the Registered Owner shall fail to fill a vacancy after the same shall occur, then the Issuer shall forthwith designate a new Trustee by a written instrument filed in the office of the Issuer. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it hereby, but only upon the terms and conditions set forth herein and subject to the provisions hereof, to all of which the Registered Owner, by accepting delivery of the Bond, agrees. Such written acceptance shall be filed with the Authorized Officers. Any successor Trustee shall have all the powers herein granted to the original Trustee.

Section 18. (a) The terms hereof shall constitute a contract between the Issuer and the Registered Owner and no variation or change in the undertaking herein set forth shall be made while the Bond is outstanding, except as hereinafter set forth in subsection (b), and the Registered Owner may at any time for and on his own behalf enforce the obligations of the Issuer by a proper suit for that purpose.

(b) The Trustee may from time to time and at any time consent to any amendment, change or modification hereof or the adoption of any supplement hereto for the purpose of curing any ambiguity or formal defect or omission, or implementing any of the provisions hereof, provided, however, that the Trustee shall not consent to any other amendment, change or modification hereof or to the adoption of any supplement hereto without the approval or consent of the Registered Owner, and provided further, that nothing herein contained shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (2) a reduction in the principal amount of the Bond or the rate of interest thereon, or (3) the creation of a pledge of Pledged Revenues superior to the pledge created hereby.

Section 19. (a) The Issuer covenants with the Registered Owner, who otherwise might qualify by law to treat interest on the Bond as tax-exempt, 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 Bond to be subject to federal income taxation pursuant to existing laws at the time of issuance; and it shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest payable on the Bond shall be exempt from federal income taxation pursuant to existing laws at the time of issuance. Without limiting the generality of the foregoing, the Issuer covenants that the proceeds of the sale of the Bond will not be used directly or indirectly in such manner as to cause the Bond to be treated as an "arbitrage bond" within the meaning of Section 148 of the Code.

(b) The Issuer represents and covenants that it has not used or permitted the use of, and covenants that it will not use or permit the use of the Improvements or the proceeds of the Bond in such a manner as to cause the Bond to be a "private activity bond" within the meaning of Section 141 of the Code. In this regard, the Issuer covenants that (i) it will not use (directly or indirectly) the proceeds of the Bond to make or finance loans to any person, and (ii) that while the Bond is outstanding the Improvements will only be used by state or local governmental entities and by persons as members of the general public.

(c) The Issuer represents and covenants that it will take no action which would cause the Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section prohibits investments in bonds issued by the United States Treasury.

(d) The Issuer certifies that (i) it is a governmental unit of the State of Arkansas with general taxing powers, (ii) 95% of the net proceeds of the sale of the Bond will be used for governmental activities of the Issuer within its jurisdiction and (iii) it knows of no reason to expect that it and its subordinate entities will issue during the current calendar year tax-exempt bonds in excess of \$5,000,000 in principal amount.

(e) The Issuer agrees to make all filings with the Internal Revenue Service (specifically including Form 8038G) that are required from time to time to assure that the Bond is

and will remain an obligation on which the interest is excluded from gross income of the holder under Section 103(a) of the Code.

(f) Neither the Issuer nor any related person (as defined in Section 147(a)(2) of the Code) shall acquire the Bond or the general obligation bond issued by the Registered Owner in order to provide loans to finance the Improvements.

Section 20. The provisions hereof are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder hereof.

Section 21. All actions, ordinances and resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED: July 22, 2003.

APPROVED:

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Mayor

\_\_\_\_\_  
City Recorder

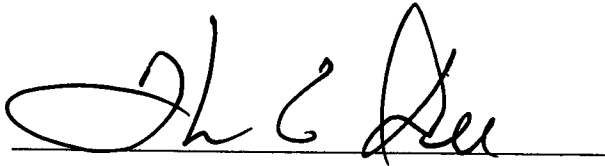
(SEAL)



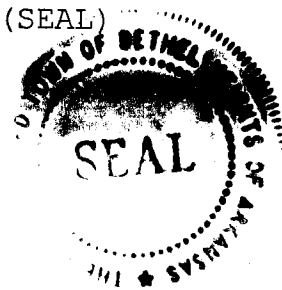
CERTIFICATE

The undersigned hereby certifies that the foregoing pages are a true and correct copy of an Ordinance, adopted at a regular session of the City Council of the City of Bethel Heights, Arkansas, held at the regular meeting place on the 22nd day of July, 2003, and recorded in Book No. 2, Page Ord # 151, now in my possession.

GIVEN under my hand and seal this 22<sup>nd</sup> day of July, 2003.



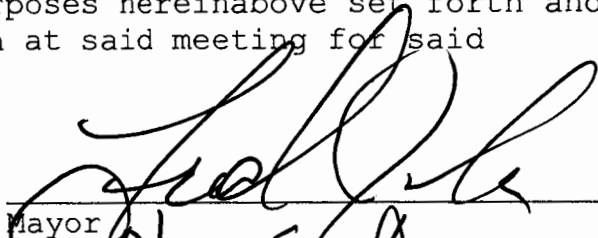
City Recorder

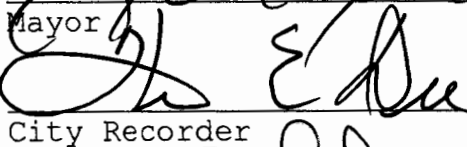


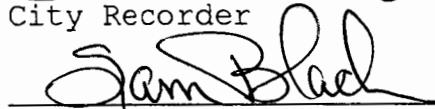
NOTICE OF AND CONSENT TO MEETING OF COUNCIL

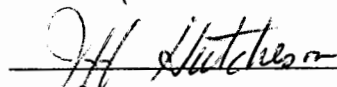
The undersigned hereby acknowledges receipt of official and timely notice of a meeting of the City Council of the City of Bethel Heights, Arkansas, to be held on July 22, 2003, at 5:30'clock p.m., at the regular meeting place of the Council in the City of Bethel Heights, Arkansas, the purpose of the meeting being to consider an Ordinance authorizing the issuance of a sales and use tax bond to finance the cost of a sewer system, and for the transaction of such other business as may properly come before the Council.

The undersigned further consent to the meeting at the time and place and for the purposes hereinabove set forth and hereby ratify all action taken at said meeting for said purposes.

  
\_\_\_\_\_  
Mayor

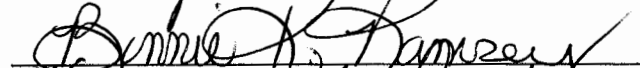
  
\_\_\_\_\_  
City Recorder

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

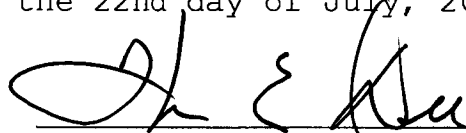
  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



CERTIFICATE

The undersigned, City Recorder of Bethel Heights, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of excerpts of the minutes of a regular meeting of the City Council of Bethel Heights, Arkansas at a special session held at the regular meeting place of the Council in said City at 5:30 o'clock p.m., on the 22nd day of July, 2003.

  
\_\_\_\_\_  
City Recorder

(SEAL)



**NOTICE OF ADOPTION OF BOND ORDINANCE**

Notice is hereby given that the City Council of the City of Bethel Heights, Arkansas has adopted an Ordinance authorizing and the issuance of a sales and use tax bond, for the purpose of financing the cost of a sewer system, in the principal amount of \$1,273,400.

A copy of the Ordinance is on file in the office of the City Recorder, where it is available for inspection.

Dated: July 22, 2003.

  
\_\_\_\_\_

City Recorder

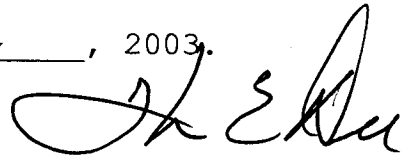
PROOF OF POSTING OF ORDINANCE NOTICE

STATE OF ARKANSAS

COUNTY OF BENTON

The undersigned, City Recorder of the City of Bethel Heights, Arkansas, hereby certifies that Notice of the adoption of Ordinance No. 151, authorizing the issuance of a sales and use tax bond, adopted and approved July 22, 2003, was posted at the following locations: Waymack Marine, Metro Supply, Lighting Emporium, Carpetsmart and City Hall, being five of the most public places in the City. The Notice was posted on July 23, 2003, and to the best of my knowledge, remained so posted for a period of thirty days thereafter. A copy of the Notice is attached hereto, Exhibit A.

DATED this 23rd day of July, 2003.



City Recorder