

ORDINANCE NO. 1965-3

AN ORDINANCE AUTHORIZING THE ISSUANCE OF
TOWN OF BROOKLAND, ARKANSAS, WATER WORKS
IMPROVEMENT REVENUE BOND AND DECLARING
AN EMERGENCY

WHEREAS, the Town of Brookland, Arkansas, an incorporated town, desires to construct a water works system, and the Town has had Harold L. Smith & Associates, Consulting Engineers, Hot Springs, Arkansas, prepare plans and estimates of cost of the needed improvements, and these plans have been filed and show an estimated cost of \$110,000.00, which amount the Town proposes to obtain by the sale of a \$107,000.00 water revenue bond in accordance with this Ordinance, and \$3,000.00 derived from other revenue of the Town of Brookland; and

WHEREAS, the United States Department of Agriculture acting through the Farmers Home Administration (sometimes hereinafter referred to as the "Government") pursuant to the Consolidated Farmers Home Administration Act of 1961 is authorized to make a loan on the terms and conditions provided herein.

WHEREAS, the Town Council has determined to secure a loan from the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (hereinafter called the "Government") pursuant to the provisions of the Consolidated Farmers Home Administration Act of 1961, and accordingly to provide herein those covenants and provisions required therefor by the Government; the Council having further determined that the Town is unable to obtain sufficient credit elsewhere to finance the water works system taking into

consideration prevailing private and cooperative rates and terms currently available;

NOW THEREFORE,

BE IT ORDAINED by the Town Council of the Town of Brookland, Arkansas:

SECTION 1: That there is immediate need for the construction of a water system consisting of a tank, well and water distribution system.

SECTION 2: That the Council further finds and declares that the obtaining of a loan from the Farmers Home Administration in the amount of the water revenue bond is advantageous and in the best interests of the Town in carrying out the construction of the water works system.

SECTION 3: That pursuant to the general statutes of the State of Arkansas (Act 131 of 1933, as amended; Ark. Stat. 19-4201, et seq.) there is hereby authorized to be issued a Water Revenue Installment Bond in the total amount of \$107,000.00, the proceeds of which shall be used to pay a part of the cost of the construction of the water system, including engineering, legal fees, and other necessary expenses. Said bond shall be payable in annual amortized installments, and bear interest payable annually on January 1 of each year beginning January 1, 1966, at the rate of 3.75 percent per annum until the principal and interest shall have been fully paid. Said bond shall be dated as of the date of delivery to the United States of America, and as long as said bond is held by the United States of America, such interest and principal shall be payable without presentation or demand to the

Government at the office of the County Supervisor, Farmers Home Administration, United States Department of Agriculture, Jonesboro, Arkansas, or at such other place as may be designated by the Government. The final payment, if not sooner paid, shall be due and payable forty (40) years from the date of the Bond.

The Bond, together with interest thereon, shall be payable solely out of the Water Works Revenue Bond and Interest Sinking Fund as hereinafter defined, and shall be a valid claim of the holder thereof only against such fund, and the amount of revenues pledged to said fund, which amount of said revenues is hereby pledged and mortgaged for the payment of the Bond and shall be used for no other purpose, except as hereinafter set out.

SECTION 4: COVENANTS. In order to secure and maintain for the benefit of the Government as to the payment of principal and interest thereof, and for so long as any amount is outstanding, the Town covenants that:

(a) In the event the Government shall make any advances to pay insurance premiums or other advances which may be required to protect the Government's security interest, the Town will pay, in addition to the interest on the unpaid Bond, interest on all such advances or expenditures in connection therewith made by the Government, at the same per annum rate specified in the Bond. All such advances, expenditures and interest thereon shall be deemed payable upon demand immediately after any such expenditure by the Government. Any such amounts due the Government by the Town shall take priority over any other payments from the Bond Fund payments set forth herein;

(b) Whenever there shall be invested moneys in any of the Funds which shall be available under the provisions hereof for the redemption of the Bond, such investments

may be, and at the Government's request will be, liquidated and the proceeds used for the call and redemption of the Bond;

(c) It will, prior to December 31 of each year beginning December 31, 1966, prepare a budget for the ensuing calendar year of the water works covering prospective revenues and receipts, operation and maintenance expenses, and deposits to be made during such calendar year in the various funds set up by this Ordinance. A copy of such budget will be forwarded promptly to the State Director of the Farmers Home Administration or other official designated by the Government.

(d) If at any time it shall appear to the Government that the Town is able to call for redemption or refund the then outstanding Bond, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and period of time, or by other means, the Town will, upon request of the Government, redeem, refund, or apply for and accept such loan in sufficient amount to repay the Government and will take all actions as may be required in connection with such redemption or refund.

SECTION 5: Said Bond shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF CRAIGHEAD
TOWN OF BROOKLAND

Date: _____

Brookland Water Works Improvement Revenue Bond

\$107,000.00

KNOW ALL MEN BY THESE PRESENTS:

That the Town of Brookland in the County of Craighead, State of Arkansas, for value received hereby promises to pay the United States of America, through the Farmers Home Administration, United States Department of Agriculture, at its office in Jonesboro, Arkansas, the principal sum of One Hundred Seven Thousand Dollars (\$107,000.00), with interest on the unpaid balance at the rate of 3.75 percent per annum. The said principal and interest shall be payable in the following installments on or before the following dates: \$, January 1, 1966; \$4,013.00, January 1, 1967; \$5,328.00, January 1, 1968; and \$5,328.00 annually thereafter on January 1, until the principal and interest are fully paid, except that the final payment of the entire indebtedness evidenced hereby if not sooner paid shall be due and payable forty (40) years from the date of this Bond.

This Bond is issued for the purpose of paying part of the cost of constructing the water works system (hereafter called "System") for said Town.

This Bond is issued pursuant to and in accordance with the provisions of the laws and Constitution of the State of Arkansas, and particularly Act. No. 131 of the Acts of the General Assembly of the State of Arkansas for the year 1933, as amended, and does not constitute an indebtedness of the Town of Brookland within any constitutional or statutory limitation. Said Bond is payable solely from a fixed amount of the gross revenues from the System, which amount shall be sufficient to pay the principal of and

interest on the Bond as the same becomes due and payable. Said amount has been duly set aside and pledged as a special fund for that purpose and identified as the "Water Works Revenue Bond Fund", created by the ordinance by which this Bond is authorized to be issued, and the said Town of Brookland covenants and agrees that it will keep and perform all of the covenants of said ordinance, including, without limiting the generality of the foregoing, its covenant against the sale or mortgage of said system or any part thereof, and has fixed and has covenanted and agreed to maintain rates for water services which shall be sufficient at all times to provide for the payment of the reasonable expenses of operation, repair and maintenance of said System, to provide for adequate depreciation, and to provide for the payment of the principal of and interest on the Bond as the same becomes due and payable. The Bond is additionally secured by a statutory mortgage lien upon the System.

When the total amount of principal will not be advanced at the time of loan closing, the loan shall be advanced to Borrower in accordance with the schedule stated on the reverse side hereof, and interest will run from the actual date of each advance shown on that schedule.

Prepayments of schedule installments, or any portion thereof, may be made at any time at the option of the Town. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligations of the Town to pay the remaining installments as scheduled herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required to be done precedent to and in issuing this Bond have been done, have happened, and have been performed in legal and due form as required by law and resolution, and that a sufficient amount of the income and revenue deemed to be derived from the operation of said System has been pledged to and will be set aside into said special fund for the payment of the principal and interest on said Bond.

IN WITNESS WHEREOF, the Town of Brookland, Arkansas, by its Town Council, has caused this Bond to be signed by the Mayor of the Town and the Town Recorder thereof and sealed with the corporate seal of said Town, all as of the _____ day of _____, 196_____.

TOWN OF BROOKLAND, ARKANSAS

By _____
Mayor

(SEAL)

Attest:

Town Recorder

On the back of said Bond is to appear the following:

SCHEDULE OF ADVANCES

(1) Proposed Date of Advances	(2) Amount	(3) Actual Date of Advances

SECTION 6: In order to pay the Bond and the interest thereon as it matures, the Town Council by Ordinance No. 1965-2, passed and approved Sept. 14, 1965, fixed the rates to be charged for water services, and the Town Council hereby finds the rates so fixed to be reasonable and the necessary minimum rates to be charged, and said rates are hereby approved and confirmed. The Council further finds and declares that said rates will produce a total revenue sufficient to pay the reasonable costs of the operation, repair, and maintenance of the System and to provide for adequate depreciation and to provide an annual net revenue, as hereinafter defined in this ordinance. The Rates so fixed shall never be reduced, except as provided in Section 16 (b), until the Bond and interest thereon shall have been paid in full, and the Town agrees that said rates shall when necessary be increased in an amount sufficient to provide for the maintenance of the funds hereinafter described.

SECTION 7: Construction Fund. The Mayor and Town Recorder are hereby authorized and directed to execute the Bond and deliver it to the Farmers Home Administration upon the closing of the loan. All loan funds and any funds to be contributed by the Town shall be deposited at the time of loan closing in the Construction Fund under a Deposit Agreement approved by the Farmers Home Administration. These funds will be deposited in a supervised bank account in a bank covered by Federal Deposit Insurance. Money in this fund shall be withdrawn only on checks signed by the Treasurer and countersigned by the County Supervisor of the Farmers Home Administration. Withdrawal shall be only for the purposes specified in the loan application.

The Town's share of any liquidated damages and other moneys paid by defaulting contractors, or their sureties, will be deposited in the Construction Fund to assure completion of the project, or for payment of the loan. When the construction of works of improvement has been completed, or all authorized loan purposes have been paid in full, any balance remaining in the Construction Fund shall be withdrawn and applied on the Bond as an extra payment and the Construction Fund will be closed.

SECTION 8: Water Works Revenue Fund. The Town covenants and agrees to establish, as soon as the Bond has been delivered, and to maintain so long as the Bond is outstanding, a special fund to be known as the "Water Works Revenue Fund", to be kept separate and apart from all other funds and into which shall be deposited all income and revenues derived from the operation of the System. Said fund shall be expended and used only in the manner and order hereinafter specified, all as permitted and defined as applicable statutes.

SECTION 9: Water Works Revenue Bond Fund. The Town covenants and agrees to establish, and to maintain so long as the Bond is outstanding, an account to be designated "Water Works Revenue Bond Fund" (hereinafter called "Bond Fund"), to be used exclusively for the purpose of paying the principal of and interest on the Bond. Thereafter, the Town shall transfer monthly from the Water Works Revenue Fund and deposit to the credit of the Bond Fund the following amounts: (a) Beginning with the delivery of the Bond, and on or before the 15th day of each month thereafter, sums equal to one-tenth of the amortized annual installment due

the next payment date, until a debt service reserve in the amount of \$ 5,328.00 has been accumulated; and (b) thereafter, such sums as may be necessary to meet the then current year's debt service, and maintain the reserve of \$ 5,328.00.

SECTION 10: Water Works Depreciation Fund. The Town covenants and agrees to establish, and to maintain so long as the Bond is outstanding a separate account to be designated "Water Works Depreciation Fund" (hereinafter called "Depreciation Fund"), into which shall be transferred from the Water Works Revenue Fund on or before the 15th day of each month after delivery of the Bond, a sum equivalent to five per centum (5%) of the gross revenue of the System for the preceding month. Moneys in the Depreciation Fund are to be used to pay for the cost of necessary replacement or repairs to the System facilities or for the cost of economically justifiable extensions to the System. However, in the event the available balance in the Bond Fund shall at any payment date be insufficient to pay the next installment of principal and interest and to maintain the required debt service reserve of \$ 5,328.00, funds on deposit in the Depreciation Fund may be transferred to the Bond Fund to the extent required to eliminate the deficiency in that fund.

SECTION 11: Water Works Operation and Maintenance Fund. The Town agrees to establish, and to maintain so long as the Bond is outstanding, a separate account to be designated "Water Works Operation and Maintenance Fund" (hereinafter called "Operation Fund"), into which shall

be transferred from the Water Works Revenue Fund, on or before the 15th day of each month, such sums as are estimated to be required for the necessary operation and maintenance expenses of the System for the current month, which the Town covenants will not exceed the reasonable and necessary amounts therefor. "Current expenses" shall include all reasonable and necessary costs of operating, repairing, maintaining and insuring the System, but shall exclude depreciation and payments into the Bond Fund and the Depreciation Fund.

SECTION 12: Subject to the foregoing, which are cumulative, any balance in the Water Works Revenue Fund shall be used for the purpose of prepaying ~~on~~ said Bond or for any other lawful purpose.

SECTION 13: That so long as the Bond hereby authorized remains unpaid the Town will not borrow any money from any source or contract or enter into any agreement or incur any other liabilities to be paid from a pledge of the revenues of the water works, in connection with making improvements or extensions to said water works, or for any purpose, without obtaining the prior written consent of the State Director of the Farmers Home Administration.

SECTION 14: The Bond Fund shall be used solely and only and is hereby pledged for the purpose of accomplishing the retirement of the Bond. It shall be the duty of the Town Treasurer to deposit in the Bond Fund on the 15th day of each month after the issuance of this Bond the respective sums which are required to be withdrawn from the Water Works Revenue Fund and paid into said Bond Fund, and the Bond Fund

shall be and remain in and on deposit as a trust account until applied in payment of principal and interest of the Bond.

It shall be the duty of the Town Treasurer to deliver to the Farmers Home Administration at its office in Jonesboro, Arkansas, not less than five days before the due date of any payment, a check or voucher drawn on the Bond Fund, to be used to meet the payment then due.

SECTION 15: The depository bank of each fund hereinabove created shall give security, either by a corporate bond approved by the Farmers Home Administration from a company authorized to do business in Arkansas, or by the escrow deposit of funds or other direct or fully guaranteed obligations of the United States of America, for all sums of each fund on deposit with it in excess of \$10,000.00. Moneys on deposit to the credit of accounts and funds established and maintained in conformity with the provisions of this ordinance shall be invested by the depository bank, upon request by the Town, in direct obligations of, or obligations the principal of and interest on which are guaranteed by the United States of America. Where the Town is required to maintain fixed amounts in such accounts and funds, the investments shall be valued in terms of current market value as of June 30 and December 31 of each year. Interest earned on such investments shall be deposited in the fund from which the investment was made.

SECTION 16: The terms "Town" and "Bond Fund" as used in this section shall mean, respectively, the Incorporated Town or the City issuing the Bond and the Fund provided by this ordinance for the payment of the Bond.

For and in consideration of the purchase and acceptance of the Bond authorized by this ordinance and to facilitate their payment, with interest, the Town agrees to the following terms:

(a) None of the facilities or services afforded by the System shall be furnished without a reasonable charge being made therefor. In the event that the Town or any department agency, or instrumentality thereof shall avail itself of the facilities or services afforded by the System, the reasonable value of the services and 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 revenues so received from the Town shall be deemed to be revenues 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.

(b) That the Town will, prior to the delivery of the Water Works Revenue Bond herein authorized, fix, establish, and levy the rates and charges which are required by Section 6 hereof. No reduction in the initial rate schedule for the water works may be made unless:

(1) The Town has fully complied with all of the provisions of Sections 7, 8 and 9 of this ordinance for at least the full calendar year immediately preceding such proposed reduction of the initial rate schedule; and

(2) The Reserve Fund provided in Section 9 has been built up to the required minimum reserve of \$ 5,328.00, and the Water Works Depreciation Fund provided in Section 10 has been built up to the required minimum of \$ 1,500.00; and

(3) The audit required to be made by the Public Accountant by Section 16 (h) of this ordinance for the full calendar year immediately preceding such proposed rate reduction discloses that the estimated revenues which would result from the proposed rate schedule will be sufficient to produce adequate revenues or earnings annually to pay the annual operation and maintenance expenses, the costs of all essential replacements and repairs to the water works, the principal of and interest on the water works revenue bond, and any other obligations payable annually from the revenues of the water works, and provide payments for the reserve fund required by this ordinance; and

(4) The prior written approval of the State Director of the Farmers Home Administration has been obtained, so long as the water works revenue bond issued hereunder is held by the Government.

(c) The Town will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost. So long as the Bond is unpaid, the Town agrees to maintain fire, lightning and extended coverage insurance on the System in an amount which normally would be carried by a private company engaged in a similar type of business. Insurance policies are to be taken with companies approved by the Farmers Home Administration, and are to carry a clause making them payable to the United States of America (Farmers Home Administration) as its interest may appear, are to be kept continuously in force, and either the original policies of insurance shall be placed in the custody of the Farmers Home Administration

or the Farmers Home Administration shall be furnished evidence satisfactory to it that the policies have been issued and carry the loss payable to the United States of America (Farmers Home Administration). In the event of loss, the proceeds of such insurance are to be applied solely toward the reconstruction, replacement or repair of the System. In such event the Town will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repairs. Nothing herein shall be construed as requiring the Town to expend any funds for premiums on its insurance on the System which are derived from sources other than the operation of the System.

(d) The Town Treasurer shall be the custodian of the revenues derived from the System, and shall give bond as such custodian. Such bond shall be in an amount not less than \$8,000.00 and shall be approved by the Farmers Home Administration.

(e) The System shall be operated upon a calendar year basis, beginning January 1 of each year and ending and including the following December 31.

(f) That the Town will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the water works or any part thereof, or any revenues therefrom, including any and all extensions and additions that may be made thereto, until all the bonds herein authorized to be issued shall have been paid in full, both principal and interest, except that so long as the bonds are held by the Government, with the prior written approval of the State Director of the Farmers Home Administration, the Town may sell any

portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of the bonds herein authorized, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net income of the system in accordance with the provisions of this ordinance.

(g) All revenues from the System shall be deposited in such depositary or depositaries as may be lawfully designated from time to time, subject, however, to the giving of security by each such depositary as now or as hereafter may be required, and provided each such depositary shall hold membership in the Federal Deposit Insurance Corporation. All deposits shall be made in the name of the Town and be so designated as to indicate the particular fund to which the revenues belong. Payments from each fund set out in this ordinance shall be made by check or voucher signed by two duly designated persons and drawn on the depositary in which the moneys in said fund shall have been deposited, and each such check or voucher shall briefly specify the purpose of the expenditure.

(h) The Town will keep proper books of records and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of any transactions relating to the System, which shall be available for inspection by the Farmers Home Administration during

regular business hours. The Town agrees to have these records audited by an independent public accountant or by the Audit Division of the appropriate agency of the State of Arkansas at least once each year, and it shall furnish the Farmers Home Administration a copy of this audit. In the event that the Town fails or refuses to make the audit, the Farmers Home Administration may have the audit made, the cost thereof to be charged to the cost of operation. In addition to such audit, there shall be submitted annually to the Farmers Home Administration a report consisting of a financial statement, a statement of income and expenses for the past year, and a budget for the ensuing year. This report shall be based upon the audit referred to above.

(i) If there be any default in the payment of either the principal or of the interest on the Bond, the holder or holders thereof may enforce any mortgage lien granted by statute and may, by proper suit, compel the performance of the duties of the officials of the Town, as set forth in the statutes authorizing the Bond. If there be default in the payment of the principal or of interest on the Bond or if the Town shall fail to keep any other obligation which it herein assumes, and such default shall continue for thirty days thereafter, any court having jurisdiction in any proper action, which may be instituted by the holder of the Bond in default, may appoint a receiver to administer the System on behalf of the Town, with power to charge and collect rates sufficient to provide for the expenses of the receivership, the payment of the Bond and interest thereon, and the payment of the operating expenses, and to apply the income and revenues in conformity with said

statutes and this ordinance providing for the issuance of said Bond, but when all defaults are cured, the receivership shall be ended and the management and control of the System restored to the Town.

(j) The Town further covenants and agrees that if default is made in the payment of the Bond, or if the Town fails to meet any Bond Fund requirements, the holder of such Bond may declare that Bond immediately due and payable and in default, and institute suit to enforce the pledge lien herein granted. The failure to exercise this option upon any default shall not be a waiver of the right to exercise it upon any subsequent default.

(k) It is hereby declared that the provisions of this ordinance constitute a contract by and between the Town and the holders of the Bond issued by authority hereof; and after the Bond has been issued, the terms of said provisions shall not be changed except with the written consent of the Farmers Home Administration.

SECTION 17: The Mayor and Town Recorder are hereby directed to publish by posting in at least three public places in the Town of Brookland, Arkansas, certified copies of this ordinance, preceded by notice of hearing signed by them, in substantially the following form:

NOTICE

Notice is hereby given that the Town Council of Brookland, Arkansas, has adopted the ordinance hereinafter set out; that the Town contemplates the issuance of the Bond described in said ordinance; and that any person interested may appear before the Council on the _____ day of _____, 19____, at _____ o'clock _____ .M., at the usual place of meeting of the

Council in _____, Arkansas, and present protests. At such hearing all objections and suggestions will be heard and the said Council will take such action as it deems proper in the premises.

DATED this 14th day of September, 1965.

Lester Elder
Mayor of Brookland, Arkansas

Attest:

Lorris D. Elder
Town Recorder

SECTION 18: It is hereby ascertained and declared that there is immediate need, in order to protect the health and property of the inhabitants of the Town, for the construction of the water works system of the Town of Brookland, Arkansas; therefore, an emergency exists and this ordinance is necessary for the preservation of the public peace, health and safety, and shall take effect and be in force without delay from and after its passage.

Passed: September 14, 1965.

APPROVED:

Lester Elder
Mayor

(SEAL)

Attest:

Lorris D. Elder
Town Recorder

CERTIFICATE

I, the undersigned, Town Recorder of Brookland, Arkansas, hereby certify the foregoing to be a true copy of an ordinance passed by the Town Council at a duly called and constituted

meeting at which more than two-thirds of the total number of members-elect of the Council were present and voted for said ordinance, which is now of record in Book 1, Page _____, of the records of said Town.

CERTIFIED under my hand and the seal of said Town, this 14th day of September, 19 65.

Larnie D. Elder
Town Recorder

(SEAL)