

ORDINANCE NO. 10-22

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF BETTERMENTS AND IMPROVEMENTS TO THE WATER SYSTEM OF THE TOWN OF ROSSTON, ARKANSAS; AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COST OF CONSTRUCTION; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; CONFIRMING WATER RATES; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the Town of Rosston, Arkansas (the "Town") owns and operates a water system (the "System"); and

WHEREAS, the Town Council has determined that betterments and improvements to the System (the "Improvements") are necessary in order to make the services of the System adequate for the needs of the Town; and

WHEREAS, a preliminary report, general plans and estimates of cost for the Improvements have been examined and approved by the Town Council and a copy of such general plans are on file at the offices of the Town where they may be inspected by any interested person; and

WHEREAS, in order to finance a portion of the costs of the Improvements, including bond issuance costs, the Town is making arrangements for the sale of a \$272,826 principal amount bond (the "Series 2020A Bond") to the Arkansas Development Finance Authority, as purchaser (the "Bondholder"), at a price of par for a bond bearing interest at the rate of 0% per annum pursuant to a Bond Purchase Agreement (the "2020A Agreement") among the Town, the Bondholder and the Arkansas Natural Resources Commission (the "Commission"), which has been presented to and is before this meeting; and

WHEREAS, in order to finance a portion of the costs of the Improvements, including bond issuance costs, the Town is making arrangements for the sale of a \$272,826 principal amount bond (the "Series 2020B Bond") to the Bondholder, as purchaser, at a price of par for a bond bearing interest at the rate of 0% per annum pursuant to a Bond Purchase Agreement (the "2020B Agreement") among the Town, the Bondholder and the Commission, which has been presented to and is before this meeting; and

WHEREAS, the Town has outstanding its Water Revenue Bond, dated June 7, 1983 (the "1983 Bond"), authorized by Ordinance No. 23 of the Town, adopted January 6, 1983 (the "1983 Ordinance"); and

WHEREAS, the Town has outstanding its Water Revenue Bonds, dated September 24, 2014 (the "2014 Bonds"), authorized by Ordinance No. 1-2014 of the Town, adopted August 11, 2014 (the "2014 Ordinance"); and

WHEREAS, the Town is authorized, under the provisions of Amendment No. 65 to the Arkansas Constitution, Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Code") and Title 14, Chapter 164, Subchapter 4 of the Code (collectively, the "Authorizing Legislation"), to issue and sell the Series 2020A Bond and the Series 2020B Bond (collectively, the "bonds"); and

WHEREAS, the Bondholder intends to pledge the Series 2020A Bond as collateral for the payment of its water system revolving loan fund revenue bonds (the "ADFA Bonds"), which may be issued from time to time, to the bank or trust company to be named as trustee for the ADFA Bonds (the "ADFA Trustee"); and

WHEREAS, the Town is required to pay to the Arkansas Development Finance Authority, as servicer (the "Authority"), a servicing fee equal to 1% per annum of the outstanding principal amount of the bonds (the "Servicing Fee");

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Rosston, Arkansas:

Section 1. The Improvements shall be accomplished and shall be a part of the System. The Mayor and Town Recorder are hereby authorized to take, or cause to be taken, all action necessary to accomplish the Improvements and to execute all required contracts.

Section 2. The sale to the Bondholder of up to \$545,652 in principal amount of bonds, consisting of a \$272,826 Series 2020A Bond and a \$272,826 Series 2020B Bond, from the Town at a price of par for bonds bearing interest at the rate of 0% per annum and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail is hereby approved and the bonds are hereby sold to the Bondholder. The Mayor is hereby authorized and directed to execute and deliver the 2020A Agreement and the 2020B Agreement (collectively, the "Agreement") on behalf of the Town and to take all action required on the part of the Town to fulfill its obligations under the Agreement. The Agreement is hereby approved in substantially the form submitted to this meeting with such changes as may be approved by the Mayor, his execution to constitute complete evidence of such approval.

Section 3. The Town Council hereby finds and declares that the period of usefulness of the System after completion of the Improvements will be more than 15 years, which is longer than the term of the bonds.

Section 4. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly the Authorizing Legislation, a Town of Rosston, Arkansas Water Revenue Bond, Series 2020A in the principal amount of \$272,826 and a Town of Rosston, Arkansas Water Revenue Bond, Series 2020B in the principal amount of \$272,826 are hereby authorized and ordered issued, the proceeds of the sale of which will be used to finance all

or a portion of the costs of the Improvements, pay expenses incidental thereto and pay expenses of issuing the bonds.

The bonds shall bear interest at the rate of 0% per annum based upon a 360-day year of twelve consecutive 30-day months. The bonds shall be dated the date of delivery to the Bondholder. Interest shall be payable on each April 15 and October 15 after the bonds are issued. Principal shall be payable in installments on October 15, 2022 and each April 15 and October 15 thereafter until the unpaid principal is paid in full as follows:

SERIES 2020A BOND

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
10/15/22	\$13,005	10/15/27	\$13,670
04/15/23	13,070	04/15/28	13,738
10/15/23	13,135	10/15/28	13,807
04/15/24	13,201	04/15/29	13,876
10/15/24	13,267	10/15/29	13,945
04/15/25	13,333	04/15/30	14,015
10/15/25	13,400	10/15/30	14,085
04/15/26	13,467	04/15/31	14,156
10/15/26	13,534	10/15/31	14,226
04/15/27	13,602	04/15/32	14,294

SERIES 2020B BOND

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
10/15/22	\$13,005	10/15/27	\$13,670
04/15/23	13,070	04/15/28	13,738
10/15/23	13,135	10/15/28	13,807
04/15/24	13,201	04/15/29	13,876
10/15/24	13,267	10/15/29	13,945
04/15/25	13,333	04/15/30	14,015
10/15/25	13,400	10/15/30	14,085
04/15/26	13,467	04/15/31	14,156
10/15/26	13,534	10/15/31	14,226
04/15/27	13,602	04/15/32	14,294

The bonds will be registered as to both principal and interest, payable to the Bondholder, or registered assigns, as set forth hereinafter in the bond form, and shall be numbered RA-1 and RB-1, as appropriate.

Payment of principal and interest shall be by check or draft mailed to the Bondholder at its address shown on the bond registration books of the Town which shall be maintained by the Town Recorder as Bond Registrar, 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, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on a bond have been fully paid, it shall be canceled and delivered to the Town Recorder.

Section 5. The bonds 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 bonds are not general obligations of the Town but are special obligations, the principal of and interest on which, and Servicing Fee in connection therewith, are secured by a pledge of and are payable from revenues derived from the System ("Revenues"). The pledge of Revenues in favor of the bonds is subordinate to the pledge in favor of the 1983 Bond and the 2014 Bonds. The bonds and interest thereon shall not constitute an indebtedness of the Town within any constitutional or statutory limitation.

Section 6. The bonds 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:

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

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF NEVADA
TOWN OF ROSSTON
0% WATER REVENUE BOND, SERIES 2020 A

No. R A -1

\$272,826

KNOW ALL MEN BY THESE PRESENTS:

That the Town of Rosston, Nevada County, Arkansas (the "Town"), for value received, hereby acknowledges itself to owe and promises to pay to the Arkansas Development Finance Authority, or registered assigns, solely from the special fund provided as hereinafter set forth, the principal sum of

TWO HUNDRED SEVENTY-TWO THOUSAND
EIGHT HUNDRED TWENTY-SIX DOLLARS
(or the total principal amount outstanding as reflected
by the Record of Payment of Advances attached hereto)

with interest on the unpaid balance of the total principal amount at the rate of 0% per annum from the date of each advance. The principal and interest shall be payable in such coin or currency of

the United States of America as at the time of payment shall be legal tender for the payment of debts due the United States of America.

No interest shall be payable. Principal shall be payable in installments on October 15, 2022 and on each April 15 and October 15 thereafter until the unpaid principal is paid as follows:

Date

Amount

(There will be inserted the schedule set forth in Section 4 of this Ordinance.)

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the registered owner at his address shown on the bond registration book of the Town maintained by the Town Recorder as Bond Registrar, 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 providing financing of a portion of the costs of constructing betterments and improvements to the water system of the Town (the "System") and costs of authorizing and issuing this bond, and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 234, Subchapter 2 and Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, and pursuant to Ordinance No. 10-22 of the Town, duly adopted and approved on the 12th day of October, 2020 (the "Authorizing Ordinance"). Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the Town and the registered owner of this bond.

[Series 2020A - This bond may be assigned with the written approval of the Arkansas Natural Resources Commission (the "Commission"), and in order to effect such assignment the assignor shall promptly notify the Town Recorder by registered mail, and the assignee shall surrender this bond along with a written approval of the Commission to the Town Recorder for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal (as reflected by the Payment Record maintained by the Town Recorder), prior to such surrender for transfer.] [Series 2020B - This bond may be assigned to the Arkansas Natural Resources Commission (the "Commission"), and in order to effect such assignment the assignor shall promptly notify the Town Recorder by registered mail, and the Commission shall surrender this bond to the Town Recorder for transfer on the registration records. The Commission shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the Town Recorder), prior to such surrender for transfer.]

This bond may be prepaid at the option of the Town from funds from any source, in whole but not in part, at any time on and after April 15, 2022, at a prepayment price equal to the principal amount outstanding, plus accrued interest and Servicing Fee (as defined in the Authorizing Ordinance) to the prepayment date. Notice shall be given of such prepayment to the

owner of this bond or registered assigns at least 90 days prior to the prepayment date. Such notice shall be in writing mailed to the address of the owner of this bond or registered assigns at the address as reflected on the bond registration books of the Town Recorder.

This bond does not constitute an indebtedness of the Town within any constitutional or statutory limitation or provision. This bond is a special obligation payable solely from the revenues derived from the operation of the System. In this regard, the pledge of System revenues is (a) subordinate to the pledge in favor of the 1983 Bond and the 2014 Bonds (each as defined in the Authorizing Ordinance) and (b) on a parity with the pledge in favor of the Town's Water Revenue Bond, Series 2020 A, so long as any of such obligations are outstanding. A sufficient amount of System revenues to pay principal and interest has been duly set aside and pledged as a special fund for that purpose, identified as the "ADFA Bond Fund," in 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 to at least provide for the payment of the reasonable expenses of operation and maintenance of the System, to provide for the payment of the principal and interest on all the outstanding obligations 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State to exist, happen and be performed precedent to and in the issuance of this bond do exist, have happened and have been performed in regular and due time, form and manner as required by law; that this bond does not exceed any constitutional or statutory limitation of indebtedness; and that provision has been made for the payment of the principal of and interest on this bond, as provided in the Authorizing Ordinance.

IN WITNESS WHEREOF, the Town of Rosston, Arkansas has caused this bond to be executed in its name by its Mayor and Town Recorder, thereunto duly authorized, and its corporate seal to be affixed, all as of the 12th day of October, 2020.

TOWN OF ROSSTON, ARKANSAS

By



Mayor

ATTEST:



Town Recorder

(SEAL)

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

Section 7. The Town has heretofore fixed rates charged for services of the System by Ordinance No. 1-20, adopted March 9, 2020. Reference is hereby made to such ordinance fixing the rates for the details thereof and other provisions pertaining thereto, which rates, and the conditions, rights and obligations pertaining thereto, are hereby ratified, confirmed and continued. In this regard, the rates charged for the services of the System are hereby confirmed as follows:

Minimum monthly charge	\$23.58
For every 1,000 gallons of water consumption per month or portion thereof	6.75 per 1,000 gallons

The Town covenants and agrees that the rates established will produce gross Revenues at least sufficient to pay monthly operation, maintenance and funded depreciation expenses of the System, pay the principal of and interest on all outstanding obligations to which Revenues are pledged ("System Bonds"), as the same become due, pay the Servicing Fee as the same become due, create and maintain any required debt service reserves, and to make the required deposits for depreciation as specified by this Ordinance, the 2014 Ordinance and the 1983 Ordinance ("Required Payments"). The Town covenants always to maintain rates (including increases as necessary) which will provide for the Required Payments. The rates currently in effect for water service shall not be reduced without the prior written consent of the Commission and the Bondholder.

Section 8. The Treasurer of the Town shall be the custodian of Revenues and shall give bond or provide other security for the faithful discharge of his or her duties. Such bond or other security shall be approved by the Town Council. All Revenues shall at all times be accounted for separately and distinctly from other moneys of the Town. All Revenues shall be used and applied only as provided herein and shall be deposited in such depository or depositories for the Town as may be lawfully designated from time to time by the Town; subject, however, to the giving of security as now or as hereafter may be required by law and provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC"). All deposits shall be in the name of the Town and shall be so designated as to indicate the particular fund to which Revenues belong. Payments from the respective funds shall be made by check or voucher, signed by the Treasurer and one other person designated by the Town and drawn on the depository with which the moneys in the fund shall have been deposited, and each such check or voucher shall briefly specify the purpose of the expenditure.

Section 9. The Town covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell or lease the same, or any substantial portion thereof, without the prior written approval of the Bondholder and the Commission; provided, however, that nothing herein shall be construed to prohibit the Town from making such dispositions of properties of the System and such replacements and substitutions for properties of the System as shall be necessary or incidental to the efficient operation of the System as a revenue-producing undertaking.

Section 10. There has heretofore been created a special fund in the name of the Town designated the "Water Revenue Fund" (the "Revenue Fund") into which special fund there shall be paid all Revenues as and when received. Moneys in the Revenue Fund shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on the bonds and other System Bonds, to the maintenance of any debt service reserve at the required level, and to the providing of depreciation reserves and otherwise as described herein.

Section 11. (a) After making the required payments into the bond fund for the 1983 Bond and the 2014 Bonds, there shall be paid from the Revenue Fund into an account of the Town in a special fund to be created by the Bondholder and designated "Series 2020" (the "ADFA Bond Fund") for the purpose of paying the principal of and interest on the bonds the amounts specified in (b) below.

(b) In order to pay interest on the bonds, there shall be deposited from moneys in the Revenue Fund into the ADFA Bond Fund on each April 15 and October 15 after the bonds are issued and delivered until April 15, 2022, the interest due on the bonds on such dates. Commencing on the first business day of each month thereafter, there shall be deposited from moneys in the Revenue Fund into the ADFA Bond Fund an amount equal to 1/6 of the amount of principal of and interest on the bonds next due (or due in case of the months of April and October).

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

(d) When the moneys held in the ADFA Bond Fund which represent payments by the Town and interest earnings thereon or proceeds of investments therefrom (collectively, "Town Funds") shall be and remain sufficient to pay in full the principal of and interest on the bonds, the Town shall not be obligated to make any further payments into the ADFA Bond Fund.

(e) All moneys in the ADFA Bond Fund representing Town Funds shall be used solely for the purpose of paying the principal of and interest on the bonds and the Town shall automatically receive a credit for the amount of such Town Funds on hand in the ADFA Bond Fund and available for the payment of any principal and interest currently due on an interest or principal payment date irrespective of whether the Bondholder has applied or caused to be applied such funds on that date for such purpose. The Town shall receive a credit for all earnings and income derived from the investment of Town Funds each April 15 and October 15 and such earnings and income shall be credited against the next six monthly payments.

(f) The bonds shall be specifically secured by a pledge of all Revenues required to be placed into the ADFA 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 12. After making the payments into the ADFA Bond Fund as set forth above, there shall be paid from the Revenue Fund the Servicing Fee to the Authority. The Servicing Fee shall be payable on each date interest on the bonds is due and shall be calculated on the same basis as interest on the bond (if any interest was payable). The payment of the Servicing Fee is expressly made subordinate to the payment of the principal of and interest on the bonds.

Section 13. (a) After making the payments and deposits described above, payments shall be made, as required by the 1983 Ordinance, from the Revenue Fund into the fund which has heretofore been created by the 1983 Ordinance and designated the "Water Depreciation Fund" (the "Depreciation Fund"). It is recognized that so long as the 1983 Bond is outstanding, the 1983 Ordinance requires a \$25 monthly payment into the Depreciation Fund, which payment may be suspended as long as the sum of \$3,000 is maintained therein. While the 2014 Bonds are outstanding, the Town is required by the 2014 Ordinance to deposit each month into the Depreciation Fund the sum of \$345 whether or not a \$3,000 balance is being maintained.

(b) Notwithstanding the above, so long as the bonds are outstanding, the Town shall maintain a fund which is hereby created and designated as the "2020 Depreciation Fund" (the "2020 Depreciation Fund"). After making the payments and deposits described in Sections 11, 12 and 13(a) hereof, there shall be deposited into the 2020 Depreciation Fund an amount equal to 6% of gross monthly Revenues less the amounts required to be deposited into the Depreciation Fund by the 1983 Ordinance and the 2014 Ordinance, so long as the 1983 Bond and the 2014 Bonds remain outstanding. Once the 2020 Depreciation Fund reaches an amount equal to \$54,565 (the "Required Level"), the Town shall not be required to make further deposits into the 2020 Depreciation Fund; provided, however, that monthly deposits must resume, if the 2020 Depreciation Fund drops below the Required Level, until such time as the Required Level is again reached. Moneys in the 2020 Depreciation Fund may be used for replacement or repairs to the System or for other purposes approved by the Commission. Funds may only be withdrawn from the 2020 Depreciation Fund with the prior written consent of the Commission.

Section 14. After making the required deposits as described above, there shall be paid from the Revenue Fund into a special fund which has heretofore been created and designated "Water Operation and Maintenance Fund" (the "Operation and Maintenance Fund"), on the first business day of each month, an amount sufficient to pay the reasonable and necessary monthly expenses of operation, repair and maintenance 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 up on an annual basis and 1/12 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 and maintenance 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 Depreciation Fund or the Bond Fund; provided, however, that any such transfer into the Bond Fund shall be in addition to all other payments required to be made into such fund.

Section 15. The Town shall assure that (i) not in excess of 10% of the proceeds of the bonds is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the bonds during the term thereof is, under the terms of the bonds or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Town, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the proceeds of the bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the bonds during the term thereof is, under the terms of the bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Town, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of proceeds of the bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements.

The Town shall assure that not in excess of 5% of the proceeds of the bonds are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this Section, "Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

The Town covenants that it will not enter into any wholesale water contracts with non-governmental entities for the sale of water by the Town if such contracts will cause a violation of this Section.

Section 16. The principal and interest installments shall be prepayable prior to maturity as provided in the bond form in Section 6 hereof.

Section 17. As long as the bonds are outstanding, the Town shall not issue or attempt to issue any bonds having or claimed to be entitled to a priority of lien on Revenues over the lien securing the bonds, including any and all future extensions, betterments and improvements to the System except as provided in this Section.

The Town may issue additional bonds on a parity with the lien on Revenues in favor of the bonds to finance or pay the cost of constructing extensions, betterments and improvements to the System or to refund other outstanding System Bonds if there shall have been procured and