

ORDINANCE NO. A-373

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS FOR THE PURPOSE OF IMPROVING AND ENLARGING THE MUNICIPALLY OWNED WATER SYSTEM; SETTING UP CERTAIN FUNDS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas, owns its present water system, on which there is an indebtedness of \$754,000 evidenced by the following outstanding balances of bond issues: \$101,500 of an issue dated September 1, 1948, maturing serially on June 1 of the years 1962 through 1969, inclusive; \$385,000 of an issue dated March 1, 1955, maturing serially on June 1 of the years 1962 through 1979, inclusive; and \$267,500 of an issue dated February 1, 1960, maturing serially on February 1 of the years 1962 through 1980, inclusive; and

WHEREAS, the City again needs to improve and enlarge the municipal water system in order to meet the expanding commercial, industrial, and domestic needs and to protect the public health and general welfare of the inhabitants of the City, and for that purpose has had Marion L. Crist & Associates of Little Rock, Arkansas, Consulting Engineers, prepare plans, specifications, and estimates of cost of the improvements needed, which they have done and have filed their report with the City Clerk, showing an estimated cost of approximately \$323,000, and these plans are on file in the office of the City Clerk subject to inspection by any and all persons interested; and

WHEREAS, the City does not have the money to make these improvements, but it can issue \$323,000 in water revenue bonds; and after due notice, at a public sale held at 2:00 PM January 12, 1962, in the City Hall in Conway, Arkansas, the City sold the proposed issue of \$323,000 in water revenue bonds to T. J. Raney & Sons and Stephens, Inc., of Little Rock, Arkansas, at a price of par plus

accrued interest for bonds bearing a coupon rate of 4.12% per annum, with the agreement that the buyers will pay the cost of printing the bonds, the trustee's fee, and the fee of the approving attorneys, but the buyers reserved the right to convert the bonds to bonds bearing lower rates of interest, subject to the conditions set out in the notice of sale, and have presented a computation showing that the cost of maturing an issue of \$323,000 in 4.12% bonds dated January 1, 1962, and maturing serially on January 1 of the years 1979 to 1985, both inclusive, as set out in the notice of sale, is \$593,766.40, and have also presented a computation showing that the conversion of the issue to \$332,000 in bonds dated January 1, 1962, maturing serially and bearing interest as hereinafter set out, will cost a total of \$593,487.50, so that by the conversion the City will receive the same money but will pay out \$278.90 less than it would pay if the bonds were not converted, and therefore the conversion is within the terms of the agreement with the buyers and has been approved by the City's fiscal agents, and the buyers are now ready to accept delivery of the bonds as soon as the City can legally make delivery; now, therefore,

BE IT ORDAINED by the City Council of the City of Conway, Arkansas:

SECTION 1. That the City Council hereby finds there is a necessity for the improvement and enlargement of the municipal waterworks system, and that the plans and specifications prepared by Marion L. Crist & Associates, Consulting Engineers, be and the same are hereby approved and adopted, and the Council does hereby determine that it is to the best interests of the City to make the improvements set out in said plans.

SECTION 2. That the sale of the water revenue bonds to T. J. Raney & Sons and Stephens, Inc. of Little Rock, Arkansas, is at a fair price and one that is allowed by law, and the conversion of

said bonds from \$323,000 in bonds at the interest rate of 4.12% per annum to \$332,000 in bonds bearing interest as hereinafter set out will result in a saving to the City of \$278.90, and the Council does therefore approve and confirm both the sale of the bonds and their conversion to lower interest rates.

SECTION 3. That the municipal water system is now operated by a Water Committee and that said Committee shall supervise the construction of the improvements and continue the operation of the system.

SECTION 4. That the Council does hereby declare that a brief description of the improvements and enlargements to be made is as follows: The improvement and enlargement of the existing municipal waterworks system by the construction of a new filter plant with high surface pumps, and a 60,000-gallon Clearwell with piping, 6250 feet of 12-inch cast iron pipe, lands, rights-of-way, engineering, and contingencies; and that the life of the system is well beyond the term of the proposed bond issue. (All of these improvements are hereinafter termed the "Works," and the collective water system, including the new improvements and enlargements to be constructed, is hereinafter termed the "System.")

SECTION 5. That under the authority of the general statutes 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 (sometimes hereinafter termed "Act No. 131, as amended"), water revenue bonds of the City be issued in the total amount of \$332,000, the proceeds of the sale of which shall be used to pay the cost of the Works, including engineering and legal fees and other necessary expenses; that the bonds be designated "City of Conway, Arkansas, \_\_\_% Water Revenue Bond of 1962," be dated as of January 1, 1962; be numbered from 1 to 332, both inclusive; be sometimes hereinafter referred to as "bonds"; be in the denomination of \$1000

each; be callable as hereinafter set forth; and mature in numerical order on January 1 of each year as follows:

YEAR	BOND NOS. (both inclusive)	AMOUNT
1970	1	\$ 1,000
1971	2 and 3	2,000
1972	4 and 5	2,000
1973	6 and 7	2,000
1974	8	1,000
1975	9	1,000
1976	-	-
1977	-	-
1978	-	-
1979	10 to 23	14,000
1980	24 to 57	34,000
1981	58 to 115	58,000
1982	116 to 175	60,000
1983	176 to 238	63,000
1984	239 to 303	65,000
1985	304 to 332	29,000

The bonds shall bear interest payable semi-annually on January 1 and July 1 of each year, beginning July 1, 1962, at the following rates per annum: Nos. 1 to 115, inclusive, at 3 3/4%, and Nos. 116 to 332, inclusive, at 4%. The bonds shall be signed by the Mayor and City Clerk and sealed with the corporate seal of the City; the interest upon the bonds shall be evidenced by coupons thereto attached, the coupons to be signed by said Mayor by his facsimile signature, and the Mayor shall by the execution of the bonds adopt as and for his own proper signature his facsimile signature appearing on said coupons. The bonds and coupons shall be payable in any coin or currency which on the date of payment is legal tender for payment of debts due the United States of America, at the office of the Union National Bank of Little Rock, Arkansas.

The bonds, together with interest thereon, shall be payable solely out of the Water Revenue Bond Fund of 1962 as hereinafter defined, subject to the prior lien on water revenues for the payment of principal and interest of the outstanding balances of the City's water revenue bond issues dated September 1, 1948, March 1, 1955, and February 1, 1960, and shall be a valid claim of the holder thereof

only against such Fund, and the amount of the revenues pledged to said Fund, which amount of said revenues is hereby pledged and mortgaged for the equal and ratable payment of the bonds of this issue and shall be used for no other purpose than to pay the principal and interest of the bonds, except as hereinafter set out.

SECTION 6. Said bonds and coupons shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY

\_\_\_% Water Revenue Bond of 1962

No. \_\_\_\_\_ \$1000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Conway, in the County of Faulkner, State of Arkansas, for value received hereby promises to pay, solely from the special fund provided therefor as hereinafter set forth, to bearer, the sum of

ONE THOUSAND DOLLARS

on the first day of January, 19\_\_\_\_, with interest thereon at the rate of \_\_\_\_\_ per centum (\_\_\_\_%) per annum from date until paid, payable semi-annually on the first day of January and July of each year, beginning July 1, 1962, upon presentation and surrender of the annexed coupons as they severally become due. Both principal hereof and interest hereon shall be payable in any coin or currency which on the date of payment is legal tender for payment of debts due the United States of America, at the office of the Union National Bank of Little Rock, Arkansas.

This bond is one of a series of bonds aggregating Three Hundred Thirty-two Thousand Dollars (\$332,000), all of like tenor and effect except as to number, interest rate, and maturity, numbered from 1 to 332, both inclusive, and issued for the purpose of improving and enlarging the municipal water system. (The improvements together with the existing system are hereinafter called the "System.")

**This bond** and the series of which it forms a part are 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 do not constitute an indebtedness of the City of Conway within any constitutional or statutory limitation. Subject to the prior lien of the City's three outstanding bond issues dated September 1, 1948, March 1, 1955, and February 1, 1960, the bonds of this series are payable solely from a fixed amount of the gross revenues of the System, which amount shall be sufficient to pay the principal of and interest on the bonds of this issue as the same become due and payable. said amount has been duly set aside and pledged as a special fund for that purpose and identified as the "Water Revenue Bond Fund of 1962," created by the ordinance of the City of Conway under which this bond is authorized to be issued, and said city 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 and, subject to the three prior liens hereinabove described, to provide for the payment of the principal of and interest on the bonds of this issue as the same become due and payable.

**This bond is** expressly made negotiable by the statutes under which it is issued, and is issued with the intent that the laws of the State of Arkansas shall govern the construction thereof.

The bonds of this issue are callable for payment prior to maturity in inverse numerical order at par and accrued interest, as follows: If called for payment from surplus revenue derived from the operation of the System or the proceeds of this bond issue not used in construction, on any interest paying date; if called for payment from funds from any other source, on any interest paying date on and after January 1, 1965. In the event a call is made, the City shall

publish notice of such call for redemption once a week for two weeks in some newspaper of general circulation throughout the State of Arkansas and published in the City of Little Rock, Arkansas, giving the number and maturity of each bond being called, the first publication to be at least fifteen days prior to the date fixed for redemption, and after the date fixed for redemption each bond so called will cease to bear interest, provided funds for its payment are on deposit with the paying agent at that time.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all conditions, acts and things required to exist, to be performed, and to happen precedent to and in the issuance of this bond do exist, have been performed, and have happened in due time, form and manner as required by law, and that sufficient of the income and revenue which is 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 of and interest on this issue of Water Revenue Bonds of 1962.

This bond shall not be valid until it shall have been authenticated by the certificate hereon, duly signed by the Union National Bank of Little Rock, Arkansas.

IN WITNESS WHEREOF, the City of Conway, Arkansas, by its City Council, has caused this bond to be signed by the Mayor and City Clerk thereof, and sealed with the corporate seal of said City, and has caused the coupons hereto attached to be executed by the facsimile signature of said Mayor, all as of the first day of January, 1962.

CITY OF CONWAY, ARKANSAS

(Seal)

Attest:

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

\_\_\_\_\_  
City Clerk

(Form of Coupon)

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

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

On the first day of <sup>January</sup> ~~July~~, 19\_\_\_\_, the City of Conway, Faulkner County, Arkansas, unless the bond to which this coupon is attached is sooner called for payment, promises to pay to bearer the sum of \_\_\_\_\_ DOLLARS in any coin or currency which on said date is legal tender for payment of debts due the United States of America, solely out of the fund specified in the bond to which this coupon appertains, at the office of the Union National Bank of Little Rock, Arkansas, being interest then due on its Water Revenue Bond of 1962 dated January 1, 1962, and numbered \_\_\_\_\_.

CITY OF CONWAY, ARKANSAS

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

(All coupons shall be for six months' interest. The Mayor's signature on the coupons may be lithographed or engraved.)

On the back of the bonds is to appear the following:

CERTIFICATE

This is one of the 332 bonds aggregating \$332,000 described within.

UNION NATIONAL BANK  
OF LITTLE ROCK, ARKANSAS, Trustee

By \_\_\_\_\_  
Authorized Officer

Little Rock, Arkansas

SECTION 7. (a) The City Council, by Ordinance No. A-349, passed and approved November 24, 1959, fixed the rates to be charged for the services to be furnished by the System.

(b) The Council hereby finds the rates so fixed to be reasonable and the necessary minimum rates to be charged, and that they will produce a total revenue sufficient to pay the costs of the operation, repair and maintenance of the System and provide for the payment of the principal and interest of the September 1, 1948, March 1, 1955, and February 1, 1960 bonds and the bonds issued to finance the cost of the Works as the same become due and payable, and to create all funds herein provided. Except as herein authorized,



the rates for the services rendered and to be rendered by the System, as set out in said Ordinance No. A-349, shall never be reduced until all the bonds of this issue and all interest thereon have been paid in full, and shall when necessary be increased in an amount sufficient to provide for the maintenance of the funds hereinafter described.

(c) Whenever the outstanding balance of the bond issue authorized by this ordinance shall have been reduced to 50% of the original amount, exclusive of interest, and in the judgment of the Trustee the earnings of the System are sufficient to permit it, the Trustee may authorize a reduction in the rates; provided, no reduction in rates shall be made that will produce an estimated net revenue, after setting up necessary funds for operation, maintenance, and depreciation of the System, less than 150% of the maximum annual requirements for the payment of principal and interest of all revenue bonds then outstanding. Although a reduction in rates may be made, the rates shall be raised at any time later if the amount of net revenue for any year is less than 150% of such annual requirements. The decision of the Trustee, hereinafter named, as to the necessity for terminating any reduction in rates or increasing the rates at any time shall be final.

SECTION 8. From the first revenues derived from the operation of the System, the City shall set up for the operation, maintenance, and depreciation of the System, and for the payment of its outstanding water revenue bonds, all the funds created by Section 11 of the City's Ordinance No. A-240, passed September 20, 1948, for the payment of its outstanding water revenue bonds dated September 1, 1948, and all the provisions made by Ordinance No. A-301 passed March 15, 1955, for the payment of its water revenue bonds dated March 1, 1955, and all the provisions made by Ordinance No. A-353, passed February 9, 1960, for the payment of its water revenue bonds dated February 1, 1960. These three bond issues shall have the first and prior lien on the revenues of the System.

SECTION 9. The revenues derived from the operation of the System after making full provision for and maintaining the funds described in Section 8 above shall be used as follows:

(a) There is hereby created, and so long as any of the bonds hereby authorized are outstanding there shall be maintained, a special fund to be known as the "Water Revenue Bond Fund of 1962" (sometimes hereinafter referred to as the "bond fund"), into which there shall be set aside from said revenues such portion thereof as will be sufficient to pay the principal and interest as the same become due and to pay the necessary fiscal agency charges of the bonds dated January 1, 1962, and to create a margin of safety. It is hereby determined and agreed that the minimum amounts to be so set aside and paid into the bond fund each month for account of the 1962 bond issue shall be, in addition to the paying agent's fees, not less than  $1/6$  of the amount of interest becoming due on the next succeeding interest payment date plus  $1/12$  of the amount of principal becoming due on the next succeeding principal payment date plus the sum of \$300 until a reserve of \$18,000 has been accumulated.

Provided, however, that no further payments need be made into said bond fund after and so long as such amount of the bonds shall have been retired that the amount then held in such bond fund, including the reserve, is equal to the entire amount of the interest and principal that will have accrued and become due at the time of the retirement or maturity of all the bonds of this 1962 issue then remaining outstanding.

The undertaking to transfer and pay the prescribed amounts into the bond fund shall be cumulative so that in the event the available revenues during any month are inadequate to make the required transfer and payment, or if for any other reason there be a failure to make such transfer and payment, the amount of the deficiency shall be made up from the first available revenues thereafter received, and the same

shall be in addition to the amounts otherwise required to be transferred and paid into said bond fund.

(b) Said bond fund created by this ordinance shall be used solely and only and is hereby pledged for the purpose of paying the interest on and accomplishing the retirement of the bonds of this issue. Withdrawals and remittances to the place of payment of the principal and interest shall be made in ample time to meet the semi-annual payments of such principal and interest. It shall be the duty of the City Treasurer to deliver to the Trustee, not less than five days before the due date of any semi-annual payment of interest or annual payment of principal, a check or voucher drawn on said bond fund, to be used to meet the payment then due, together with the paying charges hereinafter set out.

(c) The reserve of \$18,000 to be accumulated in the bond fund as hereinabove provided shall be designated "Bond and Interest Reserve Fund of 1962" (sometimes hereinafter termed "Reserve Fund"), and whenever withdrawals are made from said Reserve Fund so as to reduce the balance therein to less than \$18,000, the extra payments of \$300 per month above described shall be resumed and shall be continued as long as may be necessary to restore the amount in said Reserve Fund to \$18,000. The funds in said Reserve Fund shall be held by the City as a trust account, or, at the option of the City, they may be invested in bonds or other direct or fully guaranteed obligations of the United States of America maturing or being subject to retirement at the option of the holder within not more than ten years from the date of such investment. Withdrawals and disbursements may be made from said Reserve Fund to meet the payment of interest or principal to whatever extent funds in the bond fund are insufficient for that purpose or for meeting special and unforeseen emergencies or repair or replacement work which could not have been anticipated or which is essential for the continued operation of the System and for the payment of which there are no other funds available.

SECTION 10. No additional water revenue bonds may be issued which would have a lien on the water revenue prior to the lien position of all water revenue bonds then outstanding. Additional water revenue bonds on a parity with these bonds may be issued whenever the net revenues of the System for each of the two calendar years immediately preceding the issuance of such additional bonds shall have been 150% of the maximum amount that will become due in any calendar year for both principal and interest on all water revenue bonds then outstanding and the bonds then proposed to be issued.

("Net revenues" are defined as gross revenues less operating expenses, which shall include salaries, wages, cost of maintenance and operation, materials and supplies, pumping costs, and insurance, as well as all other items that are normally regularly included under recognized accounting practices.)

In order to make extensions, improvements, or repairs to the System, the City may issue bonds secured by a junior lien on the net revenues as hereinabove defined, upon the condition that the bonds shall be payable only out of the revenues of the System that shall remain after providing for the maintenance, operation, and depreciation of the System, the payment of the principal and interest of all water revenue bonds then outstanding, and maintenance of the reserve fund.

SECTION 11. The revenues from the System which remain after making full provision for the funds hereinabove established are hereby declared to be surplus revenues and must be used by the City to call outstanding water revenue bonds of the City for payment prior to maturity or to make improvements or extensions to the System.

SECTION 12. There shall be a statutory mortgage lien upon the Works, which shall exist in favor of the holder of the bonds and each of them and to and in favor of the holders of the coupons attached to said bonds, and such Works shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal

of the bonds; provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of Arkansas cited as City of Harrison v. Braswell, 209 Ark. 1094, 194 SW(2d) 12, and that said statutory lien shall not be asserted or enforced so as to result in a foreclosure or sale of any of the properties constituting the System, but said statutory mortgage lien shall be recognized and enforced only for the purpose of preventing the sale, attempted mortgage, lease, or disposal in any other manner of an integral part of said System.

SECTION 13. The Mayor and City Clerk are hereby authorized and directed to execute the bonds and deliver them to the buyers upon the payment of the full purchase price and accrued interest. The money received for accrued interest shall be paid into the bond fund. The balance of the money received for the bond issue shall be deposited in a special fund to be known as the "Water Construction Fund Account" in one or more banks, each of which shall be a member of the Federal Reserve System, and each depository shall be required to furnish security for said funds either by a bond executed by a corporate surety company authorized to do business in the State of Arkansas and approved by the Water Committee, or by the escrow deposit of United States bonds. The money in the Water Construction Fund Account shall be used by the Water Committee solely for the purpose of paying the cost of the Works according to the plans therefor which are now on file, together with the necessary engineering, legal, and other expenses incidental to such construction, and except for legal and engineering costs, shall be paid out only on engineer's estimates, and each depository shall be notified of this requirement.

SECTION 14. Whenever there is in the bond fund, in addition to the Reserve Fund, a surplus in the sum of \$1000 or more in excess of the amounts required to pay the current interest and principal

becoming due on and before July 1 of the next succeeding calendar year, it may be used for the purchase of bonds hereby authorized in the following manner: The City shall designate a date which shall be not less than fifteen days nor more than twenty days from the time said date is designated, at which time it will receive sealed tenders of bonds and act upon such offers in open Council session. Notice of the time and place of receiving such sealed tenders shall be published at least once not less than ten days before such date in a newspaper of general circulation published in the City of Little Rock, Arkansas. Said notice shall also be given in writing to the Trustee, not less than ten days before such date. The entire surplus available for the retirement of bonds computed as aforesaid shall be used to purchase bonds offered at the lowest price; provided, however, that all tenders which are not for less than par and accrued interest shall be rejected and the City shall proceed to call bonds for redemption according to the provisions set out in the face of the bonds. All bonds so purchased or redeemed shall be canceled. The City will not be required or permitted to call any bond for partial payment.

SECTION 15. It is hereby declared that no provision of this ordinance is intended to or shall be construed to impair the obligation of the City's contract with the holders of the City's water revenue bonds of September 1, 1948, March 1, 1955, and February 1, 1960, and the City Council hereby finds that the revenues of the present system plus the anticipated revenues resulting from the Works will fully meet the requirements for the payment of all water revenue bonds now outstanding and the bonds of the 1962 issue.

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

For and in consideration of the purchase and acceptance of the Bonds authorized by this ordinance and to facilitate their payment, with interest, the City 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 City 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 City or such department, agency, or instrumentality, and shall be paid for as the charges therefor accrue. The revenues so received from the City shall be deemed to be revenues derived from the operation of the System; provided, however, that nothing herein shall be construed as requiring the City or any department, agency, or instrumentality thereof to avail itself of the facilities or services afforded by the System.

(b) The City will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost. So long as any of the Bonds are outstanding, the City agrees to maintain fire, lightning and tornado insurance on the System in an amount which normally would be carried by a private company engaged in a similar type of business. These insurance policies are to be taken with companies approved by the Trustee, are to carry a clause making them payable to the Trustee 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 Trustee or the Trustee shall be furnished evidence satisfactory to it that the policies have been issued and carry the loss payable to the Trustee clause. 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 City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repairs. Nothing herein shall be construed as requiring the City to expend any funds for premiums on its insurance on the System which are derived from sources other than the operation of the System.

(c) The City 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 \$ 10,000 and shall be approved by the Trustee.

(d) The System shall be operated upon a fiscal year basis, beginning July 1 of each year and ending on including the following June 30.

(e) So long as any of the Bonds are outstanding, the City will not mortgage, pledge, or otherwise encumber the System or any part thereof or any revenues therefrom, except as herein provided, and will not sell, lease, or otherwise dispose of any substantial portion of the same. The obligations of the City set out in this ordinance, the pledge of revenues, and the City's agreement not to mortgage, pledge, or otherwise encumber the System, shall be made a matter of public record by having a certified copy of this ordinance recorded as a mortgage in the office of the Circuit Clerk and ex-officio Recorder of Faulkner County, Arkansas.

(f) All revenues from the System shall be deposited in such depository or depositories as may be lawfully designated from time to time, subject, however, to the giving of security by each such depository as now or as hereafter may be required, and provided each such depository shall hold membership in the Federal Deposit Insurance Corporation. All deposits shall be made in the name of the City 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 depository 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.

(g) The Bonds, together with interest thereon, are not general obligations of the City nor do they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely out of the Bond Fund and shall be a valid claim of the holders thereof only against said Fund, and the amount of the revenues pledged to said Fund, which Fund is hereby pledged for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal and interest of the Bonds as the same mature, except as provided in this ordinance.

(h) It is covenanted and agreed by the City with the holder or holders of the Bonds, or any of them, that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and statutes of the State of Arkansas, including the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System and applying the revenues therefrom to the respective funds herein created.

(i) The City 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. The City agrees to have these records audited by an independent certified public accountant at least once each year, and it shall furnish the Trustee a copy of this audit. In the event that the City fails or refuses to make the audit, the Trustee may have the audit made, the cost thereof to be charged to the cost of operation.

(j) If there be any default in the payment of either the principal or of the interest on any of the Bonds, 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 City, as set forth in the statutes authorizing the Bonds. If there be default in the payment of the principal or of interest on the Bonds or if the City 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 either by the Trustee on behalf of all the bondholders, or by the holder of a Bond in default, may appoint a receiver to administer the System on behalf of the City, with power to charge and collect rates sufficient to provide for the expenses of the receivership, the payment of the Bonds 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 Bonds, but when all defaults are cured, the receivership shall be ended and the management and control of the System restored to the City.

(k) The City further covenants and agrees that if default is made in the payment of any Bond or coupon, or if the City fails to meet any Bond Fund requirements, the holder of such Bond may declare that Bond immediately due and payable and in default, and either the Trustee on behalf of all the bondholders or any bondholder for himself may 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.

(l) The Bonds authorized hereby shall be callable for payment before maturity according to the terms set out in the bond form.

(m) The City hereby agrees to make all payments on Bonds and interest only through the designated paying agent. All Bonds paid or purchased, either at or before maturity, shall be canceled when such payment or purchase is made, together with all unmatured coupons appertaining thereto, shall be returned to the City, and shall not be reissued. All unpaid interest coupons maturing on or prior to the date of such payment or purchase shall continue to be payable to the respective bearers thereof.

(n) The charges for paying Bonds and interest coupons shall be  $\frac{1}{8}$  of 1% on principal and 5c per coupon; provided, the minimum fee for any semi-annual payment shall be \$ 5.00. No withdrawal from the Bond Fund shall be made for any purpose other than the payment of Bonds and interest, and the monthly deposits in the Bond Fund or with the Trustee shall be at the sole risk of the City and shall not operate as a payment of the Bonds or coupons until so applied.

(o) Wherever reference is made in this ordinance to a Trustee, it shall refer to

the Union National Bank of Little Rock, Arkansas.

The said Trustee shall be responsible only for wilful misconduct in the execution of this trust. The recitals of fact herein contained, and contained in the Bonds, except the recitals in the Trustee's Certificate, are statements of the City and shall not be construed as being made by the Trustee. The Trustee shall not be required to effect insurance against fire or damage to mortgaged property, nor to advance any money to pay insurance premiums, nor to pay any charges or special assessments against said property, nor to see that this pledge of revenue is properly recorded and kept in force as a pledge, nor shall it be required to take notice or be deemed to have had notice of any default of the City in the failure to perform any of the conditions of this ordinance, unless said Trustee shall have been specifically notified in writing of said default; nor shall it be required to take any action hereunder until it shall have been indemnified to its satisfaction by the holders of the Bonds, or some of them, against loss or damage on account thereof. The Trustee is authorized in its discretion to release any real or personal property no longer used in the operation of the System. The holder or holders of a majority in value of the Bonds at any time outstanding may at their option remove the Trustee, and may appoint a successor trustee for one either removed or resigned, by an instrument duly acknowledged and filed for record in the office of the Circuit Clerk and ex-officio Recorder of

Faulkner County.

The Trustee may resign at any time upon ten days' written notice to the City Clerk. The successor trustee shall have all the rights and powers of the originally appointed Trustee.

(p) It is hereby declared that the provisions of this ordinance are separable, and if any provision of this ordinance shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of the ordinance.

(q) It is hereby declared that the provisions of this ordinance constitute a contract by and between the City and the holders of the Bonds and interest coupons issued by authority hereof; and after the Bonds have been issued and paid for, the terms of said provisions shall not be changed except with the written consent of the holders of all Bonds and coupons then Outstanding.

SECTION 17. The Mayor is hereby directed to publish for one insertion in \_\_\_\_\_, which is hereby found and declared to be a newspaper published in and of general circulation in the City of Conway, Arkansas, a certified copy of this ordinance, preceded by a notice signed by him, in substantially the following form:

NOTICE

Notice is hereby given that the City Council of the City of Conway, Arkansas, has adopted the ordinance hereinafter set out; that said City contemplates the issuance of the bonds described in said ordinance; that any person interested may appear before the Council on the \_\_\_\_\_ day of February, 1962, at \_\_\_\_\_ o'clock \_\_\_\_ .M. at the usual place of meeting in the City Hall in Conway, and be heard. At such hearing all objections and suggestions will be heard and said Council will take such action as is deemed proper in the premises.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1962.

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Mayor of Conway, Arkansas

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 City, for the improvement and enlargement of the water system serving the City of Conway, Arkansas; therefore, an emergency exists and this ordinance, being necessary for



the preservation of the public peace, health and safety, shall take effect and be in force without delay from and after its passage.

Passed: January 25, 1962.

APPROVED:

Walter D. Dunaway  
Mayor

(Seal)

Attest:

Billy L. Langford  
City Clerk

CERTIFICATE

I, the undersigned, City Clerk of the City of Conway, Arkansas, hereby certify the foregoing to be a true copy of an ordinance passed by the City 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 \_\_\_\_\_ page \_\_\_\_\_ of the records of said City.

CERTIFIED under my hand and the seal of said City this 25 day of January, 1962.

Billy L. Langford  
City Clerk

(Seal)