

ORDINANCE NO. 10

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

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

Section 1. Definitions and Rules of Construction.

(a) Unless the context otherwise requires, the following terms as used in this Ordinance shall have the following meanings:

"Accountant" or "Accountants" shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Corporation.

"Act" means Act No. 131 of the Acts of Arkansas of 1933, as amended, codified as Arkansas Statutes Annotated Sections 19-4201 and following.

"Additional Bonds" means Additional Parity Bonds and Subordinate Bonds.

"Additional Parity Bonds" means Outstanding Bonds issued after the date of issuance of the Bonds on a parity of lien, pledge and security with the Bonds.

"Bond Fund" means the Series 1986 Bond Fund created by Section 7 of this Ordinance.

"Bonds" means the City of Conway, Arkansas Water Revenue Bonds, Series 1986, issued under this Ordinance in the principal amount of \$4,500,000.

"City" means the City of Conway, Arkansas.

"Consulting Engineer" shall mean an independent registered professional engineer or firm of independent registered professional engineers at the time engaged by the Corporation to advise and assist in the efficient operation of the System and the making of extensions and improvements to the System, who shall be favorably recognized and of suitable experience in such areas. The initial Consulting Engineer is the firm of Crist Engineers, Inc. of Little Rock, Arkansas.

"Corporation" means the Conway Corporation, an Arkansas nonprofit corporation.

"Debt Service Reserve Fund" means the Series 1986 Debt Service Reserve Fund created by Section 7 of this Ordinance.

"Debt Service Reserve Fund Requirement" means an amount equal to the lesser of (1) the maximum annual debt service in any Fiscal Year subsequent to the issuance of the Bonds (after giving effect to Mandatory Redemption Requirements), or (2) 1.25 times average annual debt service in all subsequent Fiscal Years, on all Bonds and Additional Parity Bonds.

"Depreciation Fund" means the fund by that name referred to in Section 7 of this Ordinance.

A "Determination of Taxability" occurs on the earliest of the following:

(1) on that date when any registered owner of a Bond notifies the City or the Trustee (which is required to promptly notify the City) that it has received a written opinion by an attorney or firm of attorneys of recognized standing on the subject of municipal bonds to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty days (180) after receipt by the City of such notification from the Trustee or registered owner, the City shall obtain and deliver to the Trustee and each registered owner a favorable ruling or determination letter issued to or on behalf of the City by the Commissioner or any District Director of Internal Revenue (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(2) on that date when the City shall be advised in writing by the Commissioner or any District Director of Internal Revenue (or any other government official or agent exercising the same or a substantially similar function from time to time) that an Event of Taxability shall have occurred;

(3) on that date when the City shall receive notice in writing from any registered owner, or from the Trustee, that the Internal Revenue Service (or any other government agency exercising the same or a substantially similar

function from time to time) has treated the interest on such registered owner's Bond as not exempt from federal income tax due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (2) or (3) hereof unless the City has been afforded the opportunity, at its expense, to contest any such assessment or unfavorable ruling and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined.

"Event of Taxability" means any change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation in the Authorizing Ordinance or in any certificate required to be given in connection with the issuance, sale or delivery of the Bonds) which has the effect of causing the interest paid or payable on any Bond to become subject to federal income tax.

"Fiscal Year" means the fiscal year of the System. The initial Fiscal Year is the twelve months ending December 31, but the City may change the Fiscal Year from time to time.

"Government Securities" means direct obligations of, or obligations the payment of principal of and interest on which is fully guaranteed by, the United States of America.

"Gross Water Revenues" means the total annual revenues of the System as shown on the annual report of the Accountants.

"Interest Commencement Date" means the date from which interest accrues on a Bond. The Interest Commencement Date for all Bonds initially issued shall be March 1, 1986. The Interest Commencement Date for any Bond authenticated and delivered thereafter in exchange or substitution for another Bond shall be such that no gain or loss of interest results from such exchange or substitution.

"Mandatory Redemption Requirements" means the requirements for redeeming Term Bonds prior to maturity.

"Net Revenues" means Revenues less Operation and Maintenance Expenses.

"Operation and Maintenance Expenses" means all expenses incurred in the operation and maintenance of the System which are properly accounted for such purpose under generally

accepted accounting principles. Such term does not include depreciation or obsolescence charges or reserves therefor, or payment of debt service on any indebtedness of the City.

"Operation and Maintenance Fund" means the fund by that name referred to in Section 7 of this Ordinance.

"Outstanding Bonds" means all bonds, notes or other obligations payable from Revenues now or hereafter issued and not deemed paid in accordance with the provisions of Section 14 of this Ordinance.

"Permitted Investments" means (1) Government Securities, (2) certificates of deposit issued by banks and fully insured by the Federal Deposit Insurance Corporation, (3) certificates of deposit issued by banks, provided (a) the payment of principal of and interest on the certificate is fully secured by a pledge of Government Securities, and (b) the Trustee receives an opinion of counsel satisfactory to the Trustee to the effect that the certificate holder holds a valid and legally effective security interest in the pledged Government Securities, or (4) bank repurchase agreements for Government Securities pursuant to which the City or the depository of a fund is the legal owner of and has possession of the Government Securities. However, the ordinances authorizing and securing the Senior Debt limit Permitted Investment to Government Securities. So long as any of the Senior Debt is outstanding, no other Permitted Investments are permitted without appropriate amendments to those ordinances made with the approval of the holders of the Senior Debt.

"Project" means the undertaking to acquire and construct the improvements, extensions and additions to the System being financed with the proceeds of the Bonds. The Project is described generally as the expansion of the water treatment plant to increase its capacity from 7.5 million gallons a day to 15 million gallons a day, and to make complementary expansions in the facilities for transporting raw water from the reservoir to the treatment plant and in the transmission lines for delivering treated water to customers. Upon satisfactory completion of the Project, the City will have an integrated 15 million gallon a day System.

"Rate Covenant" means the covenant of the City set out in Section 5(d) of this Ordinance.

"Revenues" means all receipts and revenues of the System, including all receipts from rates and charges, all investment earnings from revenues of the System, and all other receipts, revenues and moneys derived by, or on behalf of, the

City, in any manner, from any source, from or arising in connection with the ownership or operation of the System, including, without limitation, proceeds of any and all insurance with respect thereto, proceeds from the foreclosure of any statutory mortgage or security interest, or any other security rights, with respect thereto, grants (to the extent not otherwise restricted), condemnation awards, or proceeds of sales under threat of condemnation.

"Senior Debt" means all bonds payable from Revenues which have been issued and are outstanding on the date of adoption of this ordinance, being the City's (1) Water Revenue Bonds dated April 1, 1966, (2) Water Improvement Revenue Bonds dated November 1, 1977 and (3) Water Improvement Revenue Bonds dated November 1, 1982.

"Subordinate Bonds" means Outstanding Bonds issued after the date of issuance of the Bonds, the lien, pledge and security of which are expressly made subordinate to the lien, pledge and security in favor of the Bonds.

"System" means the water system now owned by the City and operated by the Corporation, serving the City and adjacent areas, including all properties (real, personal, or mixed and tangible or intangible) owned by the City for the storage treatment and transmission of water, together with the properties included in the Project and all other improvements, extensions and additions thereto, hereafter constructed or acquired with funds from any source whatsoever.

"Term Bonds" means the Bonds maturing in 2007 and 2011, and any Additional Parity Bonds so designated by the City.

"Trustee" means the original Trustee or its successor as Trustee, designated in or in accordance with the provisions of Section 16 of this Ordinance.

"Underwriter" means Stephens Inc.

(b) Unless the context otherwise requires:

(1) An accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles applicable to municipal utility systems.

(2) "Or" is not exclusive.

(3) Words in the singular include the plural, and in the plural include the singular.

(4) Words in any gender (masculine, feminine or neuter) include the other genders.

(5) Provisions apply to successive events and transactions.

(6) In determining debt service requirements, Outstanding Bonds subject to mandatory redemption prior to maturity shall be considered to mature on the mandatory redemption date.

Section 2. Recitals and Findings. (a) The City owns the System and has full right and title to the Revenues therefrom.

(b) For many years the City has employed the Corporation to manage the System. The Corporation also manages the City's municipal sewer system, electric system and cable television system. In connection with the sale and issuance of the Bonds the employment of the Corporation to manage the System has been extended for a term ending December 31, 2016.

(c) The directors of the Corporation are elected subject to the approval of the City Council and the Corporation operates the System and the City's other utilities on a nonprofit basis and for the benefit of the public. The operations of the Corporation are such that the Internal Revenue Service has determined that the Corporation is an integral part of the City for federal income tax purposes. Throughout this Ordinance, references to the City shall, if appropriate, be deemed to specifically include the Corporation.

(d) The Corporation has determined that additions and improvements to the System are necessary in order to provide an adequate supply of water to the customers of the System. The Consulting Engineer has made planning studies and has recommended the Project as the best method to provide adequate water. Preliminary plans and cost estimates for the Project have been submitted by the Consulting Engineer and are on file in the office of the City Clerk.

(e) The City Council has determined that the Project should be accomplished.

(f) The estimated cost of the Project, including expenses incidental thereto and expenses of issuing the Bonds, is \$4,500,000.

Section 3. The Bonds. (a) The issuance of the Bonds is hereby authorized on the terms and conditions provided in

this Ordinance. The Bonds will be issued under the authority of the Constitution and laws of the State of Arkansas, including particularly the Act.

(b) The Bonds shall be dated March 1, 1986, and shall mature (on March 1 in each year) in principal amounts and the Bonds of each maturity shall bear interest, as follows:

<u>MATURITY</u>	<u>PRINCIPAL AMOUNT</u>	<u>INTEREST RATE</u>
1993	35,000	7.60%
1994	110,000	7.80%
1995	115,000	8.00%
1996	125,000	8.20%
1997	135,000	8.40%
1998	150,000	8.50%
1999	165,000	8.60%
2000	180,000	8.70%
2001	195,000	8.75%
2007	1,545,000	9.00%
2011	1,745,000	9.125%

(c) Interest on each Bond shall be payable on each March 1 and September 1 after the Interest Commencement Date.

(d) The Bonds shall be delivered to the Underwriter upon payment of the purchase price of \$4,386,375 plus an amount equal to accrued interest on the Bonds from the date of the Bonds to date of delivery.

(e) The Bonds shall be issuable as fully registered Bonds in denominations of \$5,000 or any integral multiple thereof. The Bonds shall be initially issued in the denominations specified by the Underwriters, but may be exchanged for Bonds in other authorized denominations as hereafter provided. The Bonds shall be numbered from R-1 upward in order of issuance.

(f) Each Bond is transferable by the registered holder thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered Bond or Bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

(g) If and to the extent that the City shall in the future be permitted to issue these Bonds in coupon form without causing the interest thereon to be subject to federal income

taxation, the City shall, upon surrender of a fully registered Bond at the principal office of the Trustee, cause to be delivered in exchange therefor coupon Bonds subject to registration as to principal only in denominations of \$5,000 each of the same maturity and interest rate and in aggregate principal amount equal to the Bond surrendered.

(h) No charge shall be made to any Bondholder for the privilege of registration, but any Bondholder requesting any such registration shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. The City and the Trustee shall not be required to transfer or exchange any Bond called for redemption in whole or in part.

(i) If any mutilated Bond is surrendered to the Trustee, or the City and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Bond the Trustee shall authenticate and deliver, in exchange for or in lieu of such mutilated, destroyed, lost or stolen Bond, a new Bond of like tenor, principal amount, maturity and interest rate. In case any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Bond, pay such Bond. Upon the issuance of any new Bond under this subsection, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(j) The Bonds and interest thereon shall not constitute general obligations of the City or an indebtedness of the City within any constitutional or statutory limitation. The Bonds shall be payable solely from Revenues of the System and the funds and moneys held under this Ordinance as herein provided. The Revenues are pledged to the payment of the Bonds, but the pledge is subject and subordinate to prior pledges in favor of the Senior Debt.

(k) The Bonds shall be subject to redemption prior to maturity as heretofore provided in Section 3(b) and as hereafter provided in the Bond form.

(l) The Bonds shall be in substantially the following form:

(Face of Bond)

REGISTERED

REGISTERED

No. R- _____

\$ _____

STATE OF ARKANSAS
CITY OF CONWAY
WATER REVENUE BOND
SERIES 1986
DATED MARCH 1, 1986

Interest Commencement Date: _____ Interest Rate: _____ %
Maturity Date: _____ CUSIP: _____
Registered Owner: _____
Principal Amount: _____

For value received, the City of Conway, Arkansas (the "City") promises to pay to the Registered Owner shown above, or registered assigns, the principal amount shown above, on the Maturity Date identified above and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on such principal amount from the Interest Commencement Date specified above until paid at the Interest Rate per annum set forth above. Interest is payable on each March 1 and September 1 after the Interest Commencement Date.

Principal of this Bond is payable to the registered owner, in lawful money of the United States of America, upon presentation when due at the principal corporate trust office of First State Bank & Trust Company (the "Trustee") in Conway, Arkansas. Payment of each installment of interest shall be made to the person in whose name this Bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this Bond subsequent to such Record Date and prior to such interest payment date. Such interest payments shall be by check of the Trustee mailed to such registered owner at the address appearing on such registration books.

This Bond is one of an issue of City of Conway, Arkansas Water Revenue Bonds, Series 1986, aggregating Four Million Five Hundred Thousand Dollars (\$4,500,000) in principal amount (the "Bonds"), issued for the purpose of acquiring and constructing additions and improvements to the City's Water System (the "System"), and paying necessary expenses incidental thereto. The Bonds are issuable as fully registered Bonds in denominations of \$5,000 or any integral multiple thereof.

THE -- BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY ACT NO. 131 OF THE ACTS OF ARKANSAS OF 1933, AS AMENDED (THE "ACT"), AND PURSUANT TO ORDINANCE NO. _____ OF THE CITY (THE "ORDINANCE"), AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN ANY CONSTITUTIONAL OR STATUTORY LIMITATION. THE BONDS ARE NOT GENERAL OBLIGATIONS OF THE CITY, BUT ARE SPECIAL OBLIGATIONS PAYABLE SOLELY FROM REVENUES DERIVED FROM THE OPERATION OF THE SYSTEM AND FROM FUNDS AND MONEYS PLEDGED TO THE PAYMENT OF THE BONDS UNDER THE ORDINANCE. THE BONDS ARE SECURED BY A PLEDGE OF THE REVENUES OF THE SYSTEM AND BY A STATUTORY MORTGAGE LIEN ON THE PROPERTIES OF THE SYSTEM, BUT SUCH LIEN AND PLEDGE ARE SUBJECT AND SUBORDINATE TO PRIOR LIENS AND PLEDGES IN FAVOR OF THREE (3) ISSUES OF SENIOR DEBT (IDENTIFIED IN THE ORDINANCE).

(SEE THE REVERSE SIDE FOR ADDITIONAL PROVISIONS AND DEFINITIONS WHICH HAVE THE SAME EFFECT AS IF FULLY SET FORTH IN THIS PLACE.)

IN WITNESS WHEREOF, the City has caused this Bond to be executed by its Mayor and City Clerk by their facsimile signatures and a facsimile of its corporate seal to be reproduced hereon.

/s/ (facsimile signature)
Mayor

/s/ (facsimile signature)
City Clerk

(FACSIMILE SEAL)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Ordinance and is one of the Water Revenue Bonds, Series 1986, dated March 1, 1986, of the City of Conway, Arkansas.

FIRST STATE BANK & TRUST COMPANY
Conway, Arkansas
Trustee

By _____
Authorized Officer

(Back of Bond)

CITY OF CONWAY, ARKANSAS WATER REVENUE BOND
SERIES 1986

ADDITIONAL PROVISIONS

Reference is made to the Ordinance for a detailed statement of the terms and conditions upon which the Bonds are issued, of the nature and extent of the security for the Bonds, and the rights and obligations of the City, the Trustee and the registered owners of the Bonds. The City has fixed and has covenanted and agreed to maintain rates for the services of the System which shall provide Revenues in each Fiscal Year which will be sufficient to provide for the proper and reasonable expenses of operation and maintenance of the System and leave a balance equal to at least 130% of average annual debt service requirements for all bonds payable from System Revenues.

This Bond is transferable by the registered holder hereof in person or by his attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond or Bonds of the same series and the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor.

The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes, and neither the issuer nor the Trustee nor any paying agent shall be affected by any notice to the contrary.

This Bond may, upon surrender at the office of the Trustee, be exchanged for fully registered Bonds of the same maturity in like aggregate principal amount of any authorized denominations or for a like aggregate principal amount of coupon Bonds of the same maturity, upon the terms and conditions specified in the Ordinance.

The Bonds shall be subject to optional and mandatory redemption prior to maturity as follows:

1. The Bonds may be redeemed at the option of the City, in whole or in part in integral multiples of \$5,000, in

inverse order of maturities (less than all of the Bonds of a single maturity to be selected by lot by the Trustee in such manner as it may determine) on any interest payment date on or after March 1, 1996, at redemption prices (expressed as percentages of principal amount redeemed) set forth in the table below plus accrued interest to the date of redemption.

<u>Date of Redemption</u>	<u>Redemption Price</u>
March 1, 1996 or September 1, 1996	103%
March 1, 1997 or September 1, 1997	102½%
March 1, 1998 or September 1, 1998	102%
March 1, 1999 or September 1, 1999	101½%
March 1, 2000 or September 1, 2000	101%
March 1, 2001 or September 1, 2001	100½%
March 1, 2002 and thereafter	100%

2. The Bonds maturing March 1, 2007, shall be subject to Mandatory Redemption Requirements in integral multiples of \$5,000 (the Bonds or portions thereof to be redeemed to be selected by lot by the Trustee in such manner as it may determine) on March 1 of the following years and in the following principal amounts, at a redemption price equal to the principal amount plus accrued interest to the redemption date:

<u>Year of Redemption</u>	<u>Amount to be Redeemed</u>
2002	205,000
2003	220,000
2004	240,000
2005	265,000
2006	295,000
2007 (maturity)	320,000

3. The Bonds maturing March 1, 2011, shall be subject to Mandatory Redemption Requirements in integral multiples of \$5,000 (the Bonds or portions thereof to be redeemed to be selected by lot by the Trustee in such manner as it may determine) on March 1 of the following years and in the following principal amounts, at a redemption price equal to the principal amount plus accrued interest to the redemption date:

<u>Year of Redemption</u>	<u>Amount to be Redeemed</u>
2008	380,000
2009	415,000
2010	450,000
2011 (maturity)	500,000

4. In the event of the occurrence of a Determination of Taxability (as provided in the Ordinance) all Bonds then outstanding shall be redeemed in whole on a date selected by the City which is not more than 180 days after the Determination of Taxability. The redemption price shall be equal to the principal amount plus accrued interest to the redemption date.

The Trustee shall select the Bonds or portions thereof to be redeemed in accordance with the provisions hereof and shall at the expense of the City give notice of the call for redemption by first class mail placed in the mails not less than thirty (30), nor more than sixty (60), days prior to the date fixed for redemption, to the registered owner of each Bond called for redemption, addressed to such registered owner's registered address. Each notice shall specify the numbers and the maturities of the Bonds or portion thereof being called, and the date on which they shall be presented for payment. After the date specified in such notice, the Bonds or portions thereof so called shall cease to bear interest, provided funds for their payment shall have been deposited with the Trustee. In the case of partial redemption of a Bond the City shall execute and the Trustee shall authenticate and deliver to the Bondholder a new Bond of the same maturity in principal amount equal to the unredeemed portion in substitution for the partially redeemed Bond.

This Bond shall not be valid until it shall have been authenticated by the certificate hereon duly signed by the Trustee.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner, as required by law; that the indebtedness represented by this Bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that a sufficient amount of the revenues of the System will be set aside for, the payment of the principal of, premium, if any, and interest on the Bonds.

TRANSFER

FOR VALUE RECEIVED, _____
("Transferor") hereby sells, assigns and transfers unto

_____ "name and address of transferee"

(Social Security or Federal Employer Identification No. _____)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ ("Transferee") as attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

(Transferor)

NOTICE: No transfer will be issued in the name of the Transferee, unless the signature to this assignment corresponds with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the Transferee is supplied.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or commercial bank or a trust company.

Section 4. Delivery of Bonds; Application of Proceeds. (a) The Bonds shall be executed by the facsimile signatures of the Mayor and City Clerk, imprinted, stamped or sealed with the seal of the City and delivered to the Trustee. The Bonds shall be authenticated by the Trustee and delivered to the Underwriter upon payment of the purchase price specified in Section 3(d) plus accrued interest on such Bonds from date of the Bonds to date of delivery.

(b) The Trustee shall deposit in the Bond Fund a sum equal to the accrued interest on the Bonds.

(c) The Trustee shall deposit into the Debt Service Reserve Fund the sum of \$208,999.

(d) The Trustee shall deposit the balance received from the sale of the Bonds into a special account held by the Trustee in the name of the City hereby created and designated "Construction Fund".

(e) The moneys in the Construction Fund shall be disbursed solely to pay the cost of the Project, pay necessary expenses incidental thereto and pay expenses of issuing the Bonds. Disbursements shall be on the basis of requisitions which shall contain at least the following information: The person, firm or corporation to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each requisition must be signed by the General Manager of the Corporation or his designee, and in the case of all items of expense except engineering fees, legal fees and expenses pertaining to the issuance of the Bonds, each requisition shall be accompanied by a certificate signed by the Consulting Engineer certifying approval thereof. The Trustee shall issue its check upon the Construction Fund payable to the person, firm or corporation designated in the requisition. The Trustee shall keep records as to all payments made on the basis of requisitions.

When the Project shall have been completed and all obligations which are payable from the Construction Fund have been discharged, these facts shall be evidenced by filing with the Trustee a certificate signed by the General Manager of the Corporation and the Consulting Engineer. Upon receipt of the above certificate the Trustee shall pay or transfer any remaining balance therein to the Bond Fund.

Section 5. Rates and Charges. (a) The schedule of rates and charges for the System fixed by Ordinance No. 0-85-40 is hereby ratified and confirmed as the rates and charges for the System.

(b) Notwithstanding any other provision of Ordinance No. 0-85-40, the schedule of rates set forth therein will be effective for billing periods beginning after February 28, 1986.

(c) The City will continually monitor the Revenues of the System, including specifically the adequacy of its rates and delinquent billings, and will take appropriate steps to remedy any delinquent billings or inadequacy of rates. At least each five years, commencing in the Fiscal Year ending in 1991, the City will cause a Consulting Engineer to make a full review of the rates and charges of the System and file his written report thereon with the City and with the Trustee.

(d) The City covenants that it will at all times fix, charge and collect rates and charges for services furnished by the System, including increasing rates and charges as necessary, which shall provide Revenues in each Fiscal Year sufficient to:

(1) pay the City's annual Operation and Maintenance Expenses arising from the ownership and operation of the System;

(2) provide, after payment of Operation and Maintenance Expenses, an amount equal to 130% of the average annual debt service requirements for all bonds payable from Revenues.

The City's covenant in this Section 5(d) will be referred to herein as the "Rate Covenant".

Section 6. Pledge and Custody of Revenues; Revenue Producing Operation. (a). The City hereby pledges, covenants, agrees and warrants that:

- (i) the Revenues of the System are hereby pledged irrevocably to the payment of the principal of, premium, if any, and interest on the Senior Debt and the Bonds and to the maintenance of the funds established by or provided for in Section 7 of this Ordinance; and
- (ii) all funds and investments held by the Trustee or any depository as part of the Bond Fund or the Debt Service Reserve Fund are hereby pledged to the payment of the principal of, premium, if any, and interest on the Bonds, in accordance with the terms of this Ordinance.

(b) The Treasurer of the City shall be statutory custodian of the Revenues of the System. However, the Revenues shall be collected, held and disbursed by the Corporation. Each employee of the Corporation handling Revenues shall give bond for the faithful discharge of his duties. The bonds shall be approved by the City Council of the City. All Revenues shall be held in trust for the Bondholders and shall be accounted for at all times separately and distinctly from other moneys of the City. All Revenues shall be used and applied only as provided herein. The City covenants and agrees with the holders of the Bonds that the System shall be continuously operated as a revenue-producing undertaking in conformity with the requirements of this Ordinance. All Revenues shall be deposited in such depository or depositories for the City as may have been heretofore designated or as may be lawfully designated from time to time by this Ordinance or by subsequent resolution of the City Council or the Corporation; subject, however, to the giving of security as now or hereafter may be required by law, and provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation. All deposits shall be special deposits in the name of the City and shall be so designated as to indicate the particular fund to which the Revenues belong. The City shall notify the Trustee in writing of any change in depositories and shall keep the Trustee continuously advised of all depositories of funds held under this Ordinance.

Section 7. Flow of Funds. (a) All Revenues shall upon receipt be deposited into the Waterworks Revenue Fund ("Revenue Fund"), heretofore created. Moneys shall be disbursed from the Revenue Fund in the following order:

(1) There shall be paid into the bond fund heretofore created for payment of the principal and interest on the Senior Debt of the issue dated April 1, 1966 (hereafter referred to as the "Series 1966 Bond Fund"), on the first business day of each month, a sum equal to one-sixth ($1/6$) of the next installment of interest plus one-twelfth ($1/12$) of the next installment of principal of the issue dated April 1, 1966 (the "1966 Issue"). If the amount held for the credit of the debt service reserve in the Series 1966 Bond Fund should ever be less than the required amount of \$21,000, the monthly payments into the Series 1966 Bond Fund shall be increased to a sum equal to one-fifth ($1/5$) of the next installment of interest plus one-tenth ($1/10$) of the next installment of principal on the 1966 Issue, and such increased monthly payments shall continue until the debt service reserve is restored to the required amount. Amounts sufficient to pay as due all trustee and paying agent fees for the 1966 Issue shall be paid into the Series 1966 Bond Fund on a timely basis.

(2) There shall be paid into the heretofore created 1977 Water Revenue Bond Fund ("Series 1977 Bond Fund"), on the first business day of each month, a sum equal to one-sixth (1/6) of the next installment of interest plus one-twelfth (1/12) of the next installment of principal of the issue of Senior Debt dated November 1, 1977 (the "1977 Issue"). If the amount held for the credit of the debt service reserve in the Series 1977 Bond Fund should ever be less than the required amount of \$23,000, the monthly payments into the Series 1977 Bond Fund shall, until the debt service reserve is restored to the required amount, be increased to a sum equal to one-fifth (1/5) of the next installment of interest plus one-tenth (1/10) of the next installment of principal on the 1977 Issue. There shall also be paid into the Series 1977 Bond Fund on a timely basis the amounts necessary to pay as due all required trustee and paying agent fees on the 1977 Issue.

(3) There shall be paid into the heretofore created 1982 Water Revenue Bond Fund (the "Series 1982 Bond Fund"), on the first business day of each month, a sum equal to one-sixth (1/6) of the next installment of interest plus one-twelfth (1/12) of the next installment of principal on the Senior Debt issue dated November 1, 1982 (the "1982 Issue") plus an amount sufficient to provide for trustee and paying agent fees for the 1982 Issue. There is no debt service reserve for the Series 1982 Bond Fund.

(4) There shall be paid into the Series 1986 Bond Fund (hereby created), (a) beginning on the first business day of March, 1986, and continuing on the first business day of each month thereafter a sum equal to one-sixth (1/6) of the next installment of interest on all these (Series 1986) Bonds and Additional Parity Bonds, and (b) beginning on the first business day of the month that is twelve (12) months before the first principal maturity of such Bonds or Additional Parity Bonds, and continuing on the first business day of each month thereafter, a sum equal to one-twelfth (1/12) of the next installment of principal, whether due at maturity or in accordance with Mandatory Redemption Requirements, on all Bonds and Additional Parity Bonds. There shall also be paid into the Series 1986 Bond Fund from time to time such additional sums as are necessary to pay as due all fees and charges of the Trustee.

(5) There shall be paid from the proceeds of the Bonds into the Series 1986 Debt Service Reserve Fund (hereby created) the amount specified in Section 4(c). The balance of the Debt Service Reserve Fund Requirement (the lesser of maximum annual principal and interest requirements or 1.25 times average annual principal and interest requirements) will be paid from Revenues at the rate of one-sixtieth (1/60) per month. Monthly

payments shall be made on the first business day of April, 1986, and on the first business day of each succeeding month until the fund balance is equal to the Debt Service Reserve Fund Requirement. Thereafter, in the event the amount in the Debt Service Reserve Fund is ever reduced to less than the Debt Service Reserve Fund Requirement, it shall be restored to an amount equal to the Debt Service Reserve Fund Requirement by payment from the Revenue Fund on the first business day of the next month.

(6) On the first business day of each month, there shall be paid into the Depreciation Fund (heretofore created) an amount equal to 10% of the balance of the Revenues for the previous month which remain after making the required deposits under paragraphs (2) through (5).

(7) There shall be paid into the Operation and Maintenance Fund (heretofore created), on the first business day of each month, an amount sufficient to pay the reasonable and necessary expenses of operation, repair, maintenance and insuring the System for such month. Fixed annual charges such as insurance premiums and the cost of major repairs and maintenance expenses shall be computed on an annual basis and one-twelfth (1/12) of the amount thereof shall be paid into the Operation and Maintenance Fund in each month.

(8) The payments required by paragraphs (2) through (7) of this subsection (a) shall be cumulative and any deficiencies in required periodic payments shall be added to the requirement for the next period.

(9) Any moneys remaining in the Revenue Fund at the end of each Fiscal Year after making all payments required by this subsection (a) and which are in excess of an amount necessary to make payments are required by paragraphs (2) through (7) in the next succeeding month may be used for paying the cost of expanding or improving the System or for the redemption prior to maturity of bonds payable from revenues.

(b) (1) Moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds and Additional Parity Bonds and the Trustee's fees and charges, except as herein specifically provided. The Trustee shall withdraw from the Bond Fund the amounts necessary to pay as due the interest and principal of the Bonds and Additional Parity Bonds and Trustee's fees and charges.

Any amounts on deposit in the Bond Fund on the last day of each Fiscal Year which are in excess of the aggregate of required monthly deposits into the Bond Fund since the last

interest payment date on the Bonds are declared to be surplus Bond Fund moneys. Surplus Bond Fund moneys shall be transferred to the Revenue Fund.

(2) When the moneys held in the Bond Fund and the Debt Service Reserve Fund, shall be and remain sufficient to pay the principal of, premium, if any, and interest on all Bonds and Additional Parity Bonds then outstanding, and the Trustee's fees and charges, the City shall not be obligated to make any further payments into the Bond Fund.

(c) Moneys in the Operation and Maintenance Fund shall be used solely for the purpose of paying Operation and Maintenance Expenses. If a surplus shall exist in the Operation and Maintenance Fund over and above estimated expenditures for Operation and Maintenance Expenses during the next twelve months, such surplus shall be transferred to the Revenue Fund.

(d) Moneys in the Depreciation Fund shall be used solely for the purpose of paying the cost of replacements made necessary by the depreciation of the System. Any amounts in the Depreciation Fund at any time which exceed the cost of probable replacements during the then current and next ensuing Fiscal Years shall be transferred to the Revenue Fund.

(e) Disbursements from the Debt Service Reserve Fund shall be made by check signed by the Trustee. Moneys in the Debt Service Reserve Fund shall be used by the Trustee solely for the payment of debt service on Bonds and Additional Parity Bonds to the extent moneys in the Bond Fund are insufficient for such purpose. Any moneys in the Debt Service Reserve Fund in excess of an amount equal to the Debt Service Reserve Fund Requirement shall be transferred to the Revenue Fund.

(f) The City may, from time to time, change the depository of any of the above funds except the Bond Fund or the Debt Service Reserve Fund. The Trustee shall be advised in writing of any change in depositories of the aforesaid funds. The Trustee shall be and remain the depository of the Bond Fund and the Debt Service Reserve Fund.

Section 8. Additional Bonds. (a) The City may from time to time issue Additional Parity Bonds for purposes of paying costs of acquisition or construction of capital additions to the System, including reimbursement of expenditures made by it, funding required reserves and paying any indebtedness incurred by it for such purposes. The Trustee shall authenticate and deliver such Additional Parity Bonds, but only upon satisfaction of the following conditions:

(1) the City, as evidenced by a certificate of the Mayor and Treasurer, is not in default as to any covenant, condition or obligation prescribed by this Ordinance or any ordinance authorizing Additional Parity Bonds, or in the payment of any Subordinate Bonds; and

(2) each of the funds created for the payment and security of the Bonds contains the amount then required to be on deposit therein; and

(3) either:

(A) The City shall have obtained from the Accountant a certificate showing that the Net Revenues for the Fiscal Year next preceding the date of issuance of the Additional Parity Bonds are equal to at least 1.30 times the average annual principal and interest requirements (calculated on a Fiscal Year basis) for all outstanding bonds payable from Revenues after the issuance of the proposed Additional Parity Bonds; or

(B) The City shall have obtained from the Consulting Engineer a certificate showing that the estimated Net Revenues, beginning in the first Fiscal Year after completion of the additional improvements to the System, will be equal, in each Fiscal Year for the three years following such completion, to at least 1.30 times the average annual principal and interest requirements (calculated on a Fiscal Year basis) for all outstanding bonds payable from Revenues after the issuance of the proposed Additional Parity Bonds; and

(4) the City shall have obtained from the Consulting Engineer a certificate to the effect that:

(A) the construction or addition of such capital acquisitions is desirable and is required for proper and efficient operation of the System, or in the case of extensions of service, is reasonable and practicable; and

(B) the proceeds to be derived from the Additional Parity Bonds, together with other available moneys on deposit in the

Depreciation Fund, are necessary and will be sufficient to pay the costs of such construction or acquisition; and

(5) the City shall have obtained from nationally recognized bond counsel an opinion to the effect that:

(A) the conditions of this Ordinance for the issuance of the proposed Additional Parity Bonds have been satisfied; and

(B) the issuance of the proposed Additional Parity Bonds will not affect the exemption from federal income taxation of the interest on any then Outstanding Bonds.

(b) The City may issue Additional Parity Bonds for refunding all or any part of the Bonds or any Additional Parity Bonds then outstanding, if the requirements of Section 8(a) (except for paragraph 4 thereof) are met; except that Section 8(a)(3) shall not be applicable to the issuance of refunding bonds if the City shall have obtained the Accountant's certificate to the effect that debt service in each Fiscal Year thereafter for all outstanding Bonds and Additional Parity Bonds (including those to be issued for refunding) will be less than the debt service scheduled thereon for such Fiscal Years prior to the refunding.

(c) The City may from time to time issue Subordinate Bonds for any purpose specified in Section 8(a). Subordinate Bonds shall be payable from Revenues remaining each month after required payments into all bond funds for Senior Debt, the Series 1986 Bond Fund and the Series 1986 Debt Service Reserve Fund. Payments on account of principal and interest of Subordinate Bonds, including payments into bond funds and debt service reserve funds therefor, may be made before required deposits into the Depreciation Fund and Operation and Maintenance Fund. The required funding of bond fund and reserve fund requirements for Subordinate Bonds may be taken into account as a deduction from gross revenues of debt service requirements before determining the required deposit (10% of the balance) into the Depreciation Fund.

(d) The City shall not issue any Additional Bonds having or claiming a priority of lien, pledge or security over the lien, pledge and security in favor of the Bonds.

Section 9. Covenants Concerning the System. The City covenants that it will at all times:

(a) Maintain the System in good repair and operating condition, according to accepted municipal utility standards, so that the System may be properly and advantageously operated in a manner consistent with prudent management.

(b) Make all necessary and proper repairs, renewals, replacements and improvements thereto, both foreseen and unforeseen, usual and extraordinary, in order to maintain adequate service and Revenues of the System in a manner protecting the rights and security of the holders of the Bonds.

(c) Continuously operate the System in an efficient and economical manner.

(d) Employ continuously an Accountant to perform auditing functions concerning the System.

(e) Employ a Consulting Engineer to perform all functions required of the Consulting Engineer by this Ordinance.

(f) Maintain in full force and effect:

(1) fire and extended coverage insurance, insuring the City and the Trustee, as their interests may appear, against loss or damage to all above ground property of the System from the hazards included under broad form fire and extended coverage insurance policies to the extent of the full insurable value thereof; and

(2) motor vehicle liability insurance, insuring the City against liability for personal injuries or property damage resulting from the operation of motor vehicles by the system, with policy limits of not less than the minimum required, from time to time, by the Arkansas Financial Responsibility Law.

(g) File all required insurance policies, or certificates of insurance satisfactory to the Trustee, with the Trustee.

(h) Deposit all proceeds of insurance required by paragraphs (1) or (2) of subsection (f) into the Reconstruction Fund (hereby created).

(i) Charge all customers of the System rates and charges in accordance with applicable rate ordinances. No free service shall be provided by the System.

(j) To the extent permitted by law, not allow the establishment of a utility competitive with the System, unless the Consulting Engineer shall furnish a Certificate to the effect that the establishment thereof shall not materially adversely affect the Revenues to be derived by the City from the System.

(k) Keep proper books of accounts and records (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the operation of the System, and such books shall be available for inspection by the holder of any of the Bonds at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an Accountant at least once each year, and a copy of the audit shall be delivered to the Trustee and made available to interested holders and registered owners of the Bonds. In the event that the City fails or refuses to make the audit, the Trustee, or any holder or registered owner of the Bonds, may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

(l) Not mortgage, pledge or otherwise encumber the System, or any part thereof or any Revenues, except as herein specifically provided, and, except as herein specifically provided, will not sell, lease or otherwise dispose of any portion of the same. The City may, from time to time, dispose of worn out or obsolete System properties or properties not being used and not useful in the operation of the System, provided that all revenues derived from the disposition of such properties shall be deposited in the Revenue Fund.

(m) (i) In the event the System or any part thereof is damaged or destroyed by casualty or in the event the System or any part thereof is taken through exercise of the power of eminent domain, the City will proceed promptly and diligently to repair, rebuild, restore or replace the System or the portion thereof so damaged, destroyed or taken, to its condition immediately prior to the damage, destruction or taking. Any proceeds of insurance received on account of damage or destruction or any net award (defined as the gross award less legal fees and expenses incurred in obtaining the gross award) received upon a taking under the power of eminent domain shall be deposited in the Reconstruction Fund and disbursed therefrom to pay the cost of repairing, rebuilding, restoring or replacing the System. The Trustee shall be the depository of the Reconstruction Fund. Disbursements therefrom shall be made on the basis of requisition in the manner provided in Section 4(e) for Construction Fund disbursements. Any portion of the net award not required to pay such cost is hereby defined as the

"surplus net award". Any portion of such insurance proceeds not required to pay such costs is hereby defined as "surplus proceeds of insurance". Any surplus net award or surplus proceeds of insurance shall be deposited into the Revenue Fund.

(n) Operate the System in compliance with all federal, State and local laws.

Section 10. General Covenants. The City covenants and warrants as follows for the benefit of the holders of the Bonds:

(a) The City will punctually pay or cause to be paid the principal amount of, premium, if any, and interest on the Bonds in strict conformity with the terms thereof and of this Ordinance.

(b) The City will at all times comply with all terms, covenants and provisions, express or implied, of all contracts necessary for operation of the System and keep such contracts in full force and effect through the full term thereof.

(c) The City is authorized under the Act and other applicable laws to issue and sell the Bonds and to adopt this Ordinance and to pledge the Revenues and other moneys, securities and funds pledged and assigned by this Ordinance as provided herein. The Bonds and the provisions of this Ordinance are and will be valid and legally enforceable obligations of the City in accordance with their terms. The City shall at all times defend, preserve and protect the pledge of the Revenues and other moneys, securities and funds pledged under this Ordinance and all of the rights of the Bondholders against all claims and demands of all persons whomsoever.

(d) The City will, without expense to the Trustee or the Bondholders, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all and every further act, conveyance, mortgage, assignment, transfer and assurance as may be reasonably required by the Trustee for the better assuring, conveying, assigning and confirming to the Trustee the Revenues and other moneys, securities and funds pledged under this Ordinance, or for carrying out the intention or facilitating the performance of the terms of this Ordinance or the Bonds.

(e) The City has good and merchantable title to the System and the Revenues therefrom, and will defend, preserve and protect such title against all claims and demands of all persons whomsoever.

Section 11. Remedies for Default. (a) If there be any default in the payment of the principal of or interest on any of the Bonds, or if the City defaults in any Bond Fund requirements or in the performance of any of the other covenants contained and set forth in the Act or in this Ordinance, the Trustee may, and upon the written request of the holders of not less than ten percent (10%) in principal amount of the Bonds then outstanding shall, by proper suit compel the performance of the duties of the officials of the City under the laws of the State of Arkansas. In the case of a default in the payment of the principal of and interest on any of the Bonds, the Trustee may, and upon the written request of holders of not less than ten percent (10%) in principal amount of the Bonds then outstanding shall, apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the holders and registered owners with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, maintenance and repair and to pay any Bonds and interest outstanding and to apply the revenues in conformity with the laws of the State of Arkansas and with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the City.

(b) In the case of a default in the payment of principal of or interest on the Bonds the Trustee may, by notice in writing to the City, declare the entire unpaid principal of the Bonds immediately due and payable.

(c) No holder of any of the Bonds shall have any right to institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Ordinance or under the laws of the State of Arkansas unless such holder previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the holders of not less than ten percent (10%) in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the laws of the State of Arkansas, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such

notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more holders of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all holders of the Bonds, and that any individual rights of action or other right given to one or more of such holders by law are restricted by this Ordinance to the rights and remedies herein provided.

(d) All rights of action under this Ordinance or under any of the Bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds appertaining thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the holders of such Bonds, subject to the provisions of this Ordinance.

(e) No remedy herein conferred upon or reserved to the Trustee or to the holders of the Bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law.

(f) No delay or omission of the Trustee or of any holders of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Ordinance to the Trustee and to the holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(g) The Trustee may, and upon the written request of the holders of not less than fifty percent (50%) in principal amount of the Bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 12. Ordinance a Contract. This Ordinance shall, upon the issuance and delivery of the Bonds to the

Underwriter, constitute a binding contract between the City and the holders of the Outstanding Bonds, and the City will at all times strictly adhere to the terms and provisions hereof and will fully discharge all of its obligations hereunder. This Ordinance shall not be amended except as herein provided.

Subject to the terms and provisions set forth below and not otherwise, (1) the Trustee shall have the right, from time to time, without the approval of the holder of any Bond, to consent to and approve the adoption by the City of such ordinances supplemental to this Ordinance as shall be necessary or desirable, in the judgment of the Trustee, to cure any ambiguity or formal defect herein or to confer any additional rights to or for the benefit of the holders of the Bonds, and (2) the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds and Additional Parity Bonds then outstanding shall have the right, from time to time, to consent to and approve the adoption by the City of such ordinance supplemental to this Ordinance as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding in any particular, any of the terms or provisions of this Ordinance or in any supplemental ordinance, except that there shall not be permitted (a) an extension of the maturity of the principal of or the interest on any Bond or Additional Parity Bond, or (b) a reduction in the principal amount of any Bond or Additional Parity Bond or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of Revenues other than as expressly authorized by this Ordinance as now adopted, or (d) the creation of a privilege of priority of any Bond or Additional Parity Bond over any other Bond or Additional Parity Bond, or (e) a reduction in the aggregate principal amount of the Bonds and Additional Parity Bonds required for consent to such supplemental ordinance.

Section 13. Investments. (a) Moneys held for the credit of the Debt Service Reserve Fund shall be continuously invested and reinvested by the Trustee pursuant to the direction of the City in Permitted Investments which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than ten (10) years after the date of investment.

(b) Moneys held for the credit of any other fund shall, to the extent practicable, be invested and reinvested pursuant to the direction of the City in Permitted Investments which shall mature not later than the date or dates when the moneys held for the credit of the particular fund will be required for the purposes intended.

(c) Obligations so purchased as an investment of moneys in any fund or account shall be deemed at all times to be "moneys" of such fund or account, valued at cost. Any loss from such investments shall be charged to the fund or account. Any investment earnings shall be credited to the Construction Fund until the Construction Fund has been closed; thereafter investment earnings shall be credited to the fund or account from which the investment was made.

(d) A single obligation may be purchased as a common investment of moneys in two or more funds or accounts so long as (1) the obligation is a Permitted Investment and matures at such time as required to make it an authorized investment for each such fund or account, (2) the City properly accounts for the moneys invested from and the investment earnings credited to each participating fund and account, and (3) if any portion of the moneys invested is from a fund or account held by the Trustee, the Trustee shall be the legal owner of the obligation or, in the case of an obligation payable to bearer, the obligation shall be placed in the custody of the Trustee.

Section 14. Defeasance. Bonds and interest thereon for the payment or redemption of which moneys or Government Securities which are noncallable and which mature on or prior to the maturity or redemption date of the Bonds, shall have been deposited in the Bond Fund (whether upon or prior to the maturity or the redemption date of such Bonds) shall be deemed to be paid and discharged; provided, however, that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given. In determining the sufficiency of the deposit there shall be considered the principal amount of such Government Securities and interest to be earned thereon until the maturity of such Government Securities.

Section 15. Miscellaneous. (a) The City Council finds and declares that the period of usefulness of the System will be more than 40 years, which is longer than the term of the Bonds.

(b) In the event the office of Mayor, City Clerk, City Treasurer or City Council shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such

office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

(c) The City Clerk shall cause this Ordinance to be published once in a newspaper published in the City, with a notice to all persons concerned stating that it has been adopted, that the City contemplates the issuance of the Bonds and that any person interested may appear before the City Council at its regular meeting on February 25, 1986, and present protests. At such meeting a hearing will be held at which all objections and suggestions relating to this Ordinance shall be heard and the Council shall take any further action it deems proper.

(d) The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of the Ordinance.

(e) This Ordinance shall not create any right of any kind and no right of any kind shall arise hereunder pursuant to it until the Bonds shall be issued and delivered.

(f) All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

(g) In accordance with the provisions of the Act, it is hereby declared that a statutory mortgage lien shall exist upon the property of the System in favor of the Senior Debt and the Bonds. The lien in favor of these Bonds is subject and subordinate to the prior lien in favor of the Senior Debt.

Section 16. The Trustee. The original Trustee hereunder shall be First State Bank & Trust Company, Conway, Arkansas. The original Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trust imposed upon it or them by this Ordinance, but only upon the following terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any duties required of it by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trusts hereof and its duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or

advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care, or, if selected or retained by the City prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which by said subsection the Trustee is deemed to have notice, approved by the Trustee in the exercise of such care. The Trustee shall not be responsible for any loss or damage resulting from an action or non-action in accordance with any such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on such Bonds), or for insuring any property of the System or collecting any insurance moneys, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of the title of the property of the System or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all of the property of the System, it shall use due diligence in preserving such property; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the City, except as hereinafter set forth; but the Trustee may require of the City full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the property of the System.

(c) The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it, in the exercise of reasonable care, to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Ordinance upon the request or authority or consent of the owner of any Bond secured hereby, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the City signed by its Mayor and attested by the City Clerk, or a certificate of the Corporation signed by its General Manager, as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which it has been notified as provided in subsection (g) of this Section,

or of which by that subsection it is deemed to have notice, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion, at the reasonable expense of the City, in every case secure such further evidence as it may think necessary or advisable but shall in no case be bound to secure the same. The Trustee may accept a certificate of the City Clerk of the City under its seal to the effect that a resolution or ordinance in the form therein set forth has been adopted by the City Council and is in full force and effect as conclusive evidence that such resolution or ordinance has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Ordinance shall not be construed as a duty of the Trustee, and the Trustee shall be answerable only for its own negligence or willful default.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder (except a default under paragraph (5) or paragraph (6), Section 7(a), concerning which the Trustee shall be deemed to have notice) unless the Trustee shall be specifically notified in writing of such default by the City or by the holders of at least ten percent (10%) in aggregate principal amount of Bonds outstanding hereunder and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered to the office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no such default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts during any period in which it may be in the possession of or managing the real and tangible personal property of the System as in this Ordinance provided.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property of the System, including all books, papers and records of the City pertaining to the System and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Ordinance contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Ordinance, any showings, certificate, opinions, appraisals, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(l) Before taking such action hereunder, the Trustee may require that it be furnished an indemnity bond satisfactory to it for the reimbursement to it of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the negligence or willful default of the Trustee, by reason of any action so taken by the Trustee.

(m) The Trustee shall be entitled to payment and/or reimbursement for its reasonable fees for services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in and about the execution of the trusts created by this Ordinance and in and about the exercise and performance by the Trustee of the powers and duties of the Trustee hereunder, and for all reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful default of the Trustee). All such fees, costs and expenses of the Trustee must be consistent with those charged by other trustees of utility revenue bond issues under similar circumstances at the times involved. In this regard, it is understood that the City pledges no funds or revenues other than the Revenues to the payment of any obligation of the City set forth in this Ordinance, including the obligations set forth in this Section, but nothing herein shall be construed as prohibiting the City from using any other funds and revenues for the payment of any of its obligations under this Ordinance. Upon default by the City, but only upon default, pursuant to the provisions of this Ordinance pertaining to default, the Trustee shall have a first lien with right of payment prior to payment on account of principal or interest of any Bond issued hereunder upon the

Revenues for such reasonable and necessary advances, fees, costs and expenses incurred by the Trustee.

(n) The Trustee shall be required to make demand upon the City to cure and to give notice to each registered owner of Bonds then outstanding if a default occurs of which the Trustee is pursuant to the provisions of subsection (g) deemed to have or is given notice.

(o) In any judicial proceeding to which the City is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of holders of Bonds issued hereunder, the Trustee may intervene on behalf of bondholders and shall do so if requested in writing by the holders of at least ten percent (10%) of the aggregate principal amount of Bonds and Additional Parity Bonds outstanding hereunder. The rights and obligations of the Trustee under this subsection (o) are subject to the approval of the court having jurisdiction in the premises.

(p) Any bank or trust company into which the Trustee may be merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any bank or trust company resulting from any such sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor trustee hereunder and vested with all of the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that such successor trustee shall have capital and surplus of at least \$10,000,000.

(q) The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice to the City, and the registered owners of all outstanding Bonds and Additional Parity Bonds, but such resignation shall not take effect until the appointment of a successor trustee by the bondholders or by the City. Such notice may be served personally or sent by registered mail.

(r) The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the City, and signed by the holders of a majority in aggregate principal amount of Bonds and Additional Parity Bonds outstanding hereunder.

(s) In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution

or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by the court, a successor may be appointed by the holders of a majority in aggregate principal amount of Bonds and Additional Parity Bonds outstanding hereunder, by an instrument or concurrent instruments in writing signed by such holders, or by their attorneys in fact, duly authorized; provided, nevertheless, that in case of such vacancy the City by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, shall appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the bondholders in the manner above provided; and any such temporary trustee so appointed by the City shall immediately and without further act be superseded by the trustee so appointed by such bondholders. Every such temporary trustee and every such successor trustee shall be a trust company or bank in good standing, having capital and surplus of not less than \$10,000,000.

(t) In the event of a change in the office of Trustee, the prior Trustee which has resigned or been removed shall cease to be Paying Agent.

(u) There shall be paid the standard and customary Paying Agent's fees and charges of the Paying Agent for handling the payment of the principal of, premium, if any, and interest on the Bonds and Additional Parity Bonds, and funds sufficient to pay the same shall be deposited with the Paying Agent prior to the dates on which payments are required to be made on principal and interest.

Section 17. Tax Exemption; Pending Federal Tax Legislation. (a) The City covenants that it will not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Bonds will not be used directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended.

(b) The City recognizes that on December 17, 1985, the U.S. House of Representatives passed H.R. 3838 entitled the "Tax Reform Act of 1985", that H.R. 3838 includes amendments to the provisions of the Internal Revenue Code that relate to tax-exempt bonds such as the Bonds, that the amendments are, in general, effective for bonds delivered after December 31, 1985, that the amendments include new requirements for tax-exempt bonds and that, if H.R. 3838 or similar legislation is enacted

into law with the effective date mentioned above, noncompliance with these requirements may cause the interest on the Bonds to become subject to federal income taxation. The City covenants, in order to preserve the federal income tax exemption from interest on the Bonds, that:

(1) None of the Gross Proceeds of the Bonds (hereby defined to include the original proceeds of the sale of the Bonds, amounts received as a result of investing the original proceeds and amounts used to pay principal of or interest on the Bonds) will be used (directly or indirectly) either (A) to make or finance loans to persons other than governmental units, or (B) in any trade or business carried on by any person other than a governmental unit. For purposes of clause (B), use as a member of the general public shall not be taken into account.

(2) None of the Gross Proceeds of the Bonds will be used to make any investment which can reasonably be expected, on the date of delivery of the Bonds, to produce a yield over the term of the Bonds which is higher (taking into account any discount or premium) than the yield on the Bonds. The yield on the Bonds, computed on the basis of the initial offering price to the public without taking into account the underwriter's discount or costs of issuance, is 8.9714% per annum.

(3) The City will take no action which would cause the Bonds to be "federally guaranteed" within the meaning of H.R. 3838; specifically, (A) the payment of any portion of principal or interest with respect to the Bonds will not be guaranteed (directly or indirectly) by the United States or any agency or instrumentality thereof, (B) none of the proceeds of the Bonds will be used in making loans the payment of any portion of the principal or interest with respect to which are to be guaranteed by the United States or any agency or instrumentality thereof, and (C) none of the proceeds of the Bonds (exclusive of proceeds invested for an initial temporary period until needed for the purpose for which the Bonds were issued and proceeds deposited into the Bond Fund) will be invested (directly or indirectly) in federally insured deposits or accounts. Nothing in this paragraph (3) shall prohibit investments in bonds issued by the United States Treasury.

(4) Five percent (5%) or more of the Net Proceeds of the Bonds (herein defined as the original proceeds of the sale of the Bonds less issuance costs) will be spent within 30 days after the date of issuance of the Bonds to carry out the purpose for which the Bonds are being issued. The remainder of the Net Proceeds of the Bonds will be spent within three years of the date of issuance.

(5) The City will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, a statement concerning the Bonds which contains (A) the name and address of the City; (B) the date of issue, the amount of Net Proceeds of the Bonds, the stated interest rate, term and face amount of each Bond, and the costs of issuance and amount of reserves of the Bonds; (C) a description of the property to be financed with the proceeds of the Bonds; and (D) such other information as the Secretary may by regulations require.

(c) The City will not be required to comply with the covenants contained in Section 17(b) to the extent that the City receives an opinion from bond counsel to the effect that noncompliance will not make the interest on the Bonds subject to federal income taxation.

Section 18. Emergency. It is hereby found and determined that there is an urgent need to accomplish the Project in order to meet the needs of customers of the System. Therefore, an emergency is declared to exist and this Ordinance, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect immediately upon its adoption and approval.

PASSED: January 28th, _____, 1986.

ATTEST:

Martha Hester
City Clerk

APPROVED:

Bill Wright
Mayor

(SEAL)