

City's Policy

ORDINANCE NO. 76-31

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SEWER REVENUE BONDS FOR THE PURPOSE OF FINANCING THE COST TO THE CITY OF CONSTRUCTING EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWER SYSTEM; PROVIDING FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas (the "City") owns and the Conway Corporation, an Arkansas nonprofit corporation (the "Corporation"), operates for the City a Sewer System (the "System") and the City has determined that certain extensions, betterments and improvements should be constructed; and

WHEREAS, the City has outstanding (1) an issue of Sewer Revenue Bonds, dated February 1, 1960 (the "1960 Bonds"), authorized by Ordinance No. A-352, adopted and approved February 2, 1960 ("Ordinance No. A-352"), and (2) an issue of Sewer Refunding Revenue Bonds, dated February 1, 1967 (the "1967 Bonds"), authorized by Ordinance No. A-447, adopted and approved February 28, 1967 ("Ordinance No. A-447"); and

WHEREAS, the City has caused to be prepared by a qualified consulting engineer, plans, specifications and estimates for the proposed extensions, betterments and improvements to the System (the "improvements"), as described in detail in the plans and specifications, a copy of which are on file in the office of the City Clerk where they may be inspected by any interested person; and

WHEREAS, the estimated cost to the City of the improvements, including the expenses of authorizing and issuing bonds is \$2,800,000, with the balance of the cost of the improvements to be paid from grant funds to be received from an agency of the United States of America; and

WHEREAS, the City can obtain funds to pay pay the cost to the City of the improvements by issuing \$2,800,000 in principal amount of revenue bonds (the "bonds") under the provisions of Act No. 132 of the Acts of Arkansas of 1933, as amended,

secured by a pledge of net revenues from the System subordinate to the pledge of net revenues securing the 1960 Bonds and the 1967 Bonds; and

WHEREAS, the City has advertised the public sale of its \$2,800,000 in principal amount of Sewer Revenue Bonds (the "bonds") and at the sale UMIC, Inc., Memphis, Tennessee, G. Weeks & Company, Inc., New York, New York, A. Duncan Williams, Inc., Memphis, Tennessee, Parham & Company, Inc., Little Rock, Arkansas, and Swink & Company, Inc., Little Rock, Arkansas (collectively the "purchaser") bid and offered the price of par and accrued interest from the date of the bonds to date of delivery for bonds bearing interest at the rate of 6.70% per annum, plus a premium of \$16,600, and this being the best bid, the bonds were sold to the purchaser at that price; and

WHEREAS, pursuant to the authorization in the Notice of Sale the purchaser has elected to convert the \$2,800,000 of bonds bearing interest at the rate of 6.70% per annum to an issue of \$2,902,000 of 5%, 5-1/4%, 5-1/2%, 6%, 6-1/2% and 6.70% bonds, hereinafter described in detail, and the City has examined the conversion and has found it to be in accordance with the Notice of Sale and by virtue of which the City will receive no less and pay no more than it would receive and pay if the bonds were not converted;

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

Section 1. The sale of the bonds to the purchaser for the price set forth in the recitals hereof, the conversion thereof, and the construction of the improvements are approved and authorized. The construction shall be completed as expeditiously as possible and all contracts and other undertakings necessary or incidental to the accomplishment of the improvements are hereby authorized.

Section 2. It is hereby found and declared that the period of usefulness of the System is more than 40 years, which is longer than the term of the Revenue Bonds authorized hereby.

Section 3. Under the authority of the Constitution and laws of the State of Arkansas, City of Conway, Arkansas Sewer Revenue Bonds are hereby authorized and ordered issued in the total principal amount of \$2,902,000 (the "bonds"). The bonds shall be dated October 1, 1976, interest shall be payable semiannually on April 1 and October 1 of each year, commencing April 1, 1977, and shall bear interest at the following rates: Bonds Nos. 1 to 35, inclusive, maturing in the years 1978 to 1982, inclusive, shall bear interest at the rate of 5% per annum; Bonds Nos. 36 to 78, inclusive, maturing in the years 1983 to 1986, inclusive, shall bear interest at the rate of 5-1/4% per annum; Bonds Nos. 79 to 122, inclusive, maturing in the years 1987 to 1989, inclusive, shall bear interest at the rate of 5-1/2% per annum; Bonds Nos. 123 to 238, inclusive, maturing in the years 1990 to 1993, inclusive, shall bear interest at the rate of 6% per annum; Bonds Nos. 239 to 347, inclusive, maturing in the years 1994 to 1996, inclusive, shall bear interest at the rate of 6-1/2% per annum, and Bonds Nos. 348 to 582, inclusive, maturing in the years 1997 to 2001, inclusive, shall bear interest at the rate of 6.70% per annum. The bonds shall be in the denomination of \$5,000 each, except Bonds Nos. 7 and 8, which shall be in the denomination of \$1,000 each, and shall be numbered consecutively from 1 to 582, inclusive. The bonds shall be negotiable coupon bonds payable to bearer, but subject to registration as to principal or as to principal and interest. Principal and interest are payable at the principal office of First National Bank, Conway, Arkansas (the "Trustee" and "Paying Agent"). Payment of interest when registered as to interest may be by check or draft mailed to the registered owner at the address shown on the registration book of the City maintained by the Trustee. The bonds shall be subject to redemption prior to maturity as hereinafter set forth.

Section 4. The bonds shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City.

The bonds may be signed by the facsimile signature of the Mayor but must be signed by the manual signature of the City Clerk. The interest coupons attached to the bonds shall be signed by the facsimile signature of the Mayor. The facsimile signature of the Mayor shall have the same force and effect as if the Mayor had personally signed each bond and coupon upon which his facsimile signature appears. The bonds will not be general obligations of the City but will be special obligations payable solely from revenues derived from the operation of the System and will not constitute an indebtedness of the City within any constitutional or statutory limitation. The bonds, together with interest thereon, shall be payable solely out of the 1976 Sewer Revenue Bond Fund, as hereafter set forth, and shall be a valid claim of the holders thereof only against such fund and the revenues pledged to that fund, which revenues are hereby pledged and mortgaged for the equal and ratable payment of the bonds, and shall be used for no other purpose than to pay the principal of, interest on and Trustee's and Paying Agent's fees on the bonds, except as otherwise specifically provided in this Ordinance. The pledge of System revenues to the bonds of this issue is subordinate to prior pledges in favor of the 1960 Bonds and the 1967 Bonds. Nothing herein shall be construed to in any manner impair the security of the 1960 Bonds and the 1967 Bonds but when the 1960 Bonds and the 1967 Bonds are paid (or the required provision made therefor) the pledge, lien and security in favor of the bonds now being issued shall be a first and prior pledge, lien and security on the System and on System revenues.

Section 5. The bonds shall be in substantially the following form, and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:

(Bond Form)

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF FAULKNER
CITY OF CONWAY
___% SEWER REVENUE BOND

No. _____

\$5,000
\$1,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Conway, Faulkner County, Arkansas (the "City"), acknowledges itself to owe and for value received, hereby promises to pay to bearer, or if this bond be registered, to the registered owner hereof, solely from the special fund provided as hereinafter set forth, the principal sum of

FIVE THOUSAND DOLLARS
ONE THOUSAND DOLLARS

in lawful money of the United States of America on the first day of October, 19___, and to pay solely from the special fund interest hereon at the rate of _____ percent (___ %) per annum from date until paid. Interest

is payable semiannually on April 1 and October 1 of each year, commencing April 1, 1977. Principal and interest are payable at the principal office of First National Bank, Conway, Arkansas (the "Trustee" and "Paying Agent").

Payment of interest, when registered as to interest, may be by check or draft mailed to the registered owner at his address reflected on the registration book of the City maintained by the Trustee as bond registrar.

This bond is one of an issue of five hundred eighty-two (582) bonds, aggregating Two Million Nine Hundred Two Thousand Dollars (\$2,902,000), dated October 1, 1976, all of like tenor and effect except as to number, denomination, rate of interest, maturity and redemption prior to maturity (the "bonds"). The bonds are issued for the purpose of financing the cost to the City of constructing extensions, betterments and improvements to the Sewer System of the City (the "System"), paying necessary expenses incidental thereto and to the issuance of the bonds.

The bonds are issued under and pursuant to and in full compliance with the Constitution and laws of the State of Arkansas including particularly Act No. 132 of the Acts of Arkansas of 1933, as amended, and pursuant to an Ordinance of the City Council of the City duly adopted and approved, 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. The lien, pledge and security of the bonds as to System revenues are subordinate to certain outstanding 1960 Bonds and 1967 Bonds, all as set forth in Ordinance No. _____, duly adopted and approved on the _____ day of _____, 1976 (the "Authorizing Ordinance") under which the bonds are authorized to be issued. A special fund has been created by and identified in the Authorizing Ordinance as the "1976 Sewer Revenue Bond Fund" (the "Bond Fund"), and reference is hereby made to the Authorizing Ordinance for a detailed statement of the nature and extent of the security and of the rights and obligations of the City, the Trustee and the holders and registered owners of the Bonds. In the Authorizing Ordinance the City has covenanted and agreed to maintain rates for the services of the System which shall be sufficient at all times to produce sufficient revenues to provide for the payment of the reasonable expenses of operation and maintenance of the System, to provide for the payment of the principal of, interest on and Trustee's and Paying Agent's fees on all the 1960 Bonds, the 1967 Bonds and these bonds, establish and maintain required reserves, make the required deposits into the Depreciation Fund and maintain all funds at required levels.

The bonds will be subject to redemption prior to maturity, at the option of the City, in whole or in part, with there to be no partial redemption of any bond, in inverse numerical order as follows: (a) from surplus System revenues or from proceeds of the bonds in excess of the amounts needed to accomplish the improvements on any interest payment date, at a price of the principal amount of the bonds being redeemed plus accrued interest to the

date of redemption; (b) from funds from any source, on any interest payment date on and after October 1, 1986, at a price of the principal amount being redeemed, plus accrued interest to date of redemption.

Notice of redemption shall be published one time in a newspaper published in the City of Little Rock, Arkansas, and having a general circulation throughout the State of Arkansas, giving the number and maturity of each bond being called, the publication to be at least fifteen days prior to the redemption date, and after the date fixed for redemption each bond so called shall cease to bear interest, provided funds for its payment are on deposit with the Paying Agent at that time. In addition, notice shall be given by first class mail mailed fifteen days prior to the redemption date to the registered owner of each bond registered as to principal or as to principal and interest at the address of such owner reflected on the bond registration book of the Bond Registrar and, if all outstanding bonds shall be registered as to principal and interest then notice by first class mail to the registered owners thereof shall be sufficient, and it shall not be necessary to publish notice of the call.

This bond may be registered as to principal or as to principal and interest and may be discharged from such registration in the manner, with the effect and subject to the terms and conditions endorsed hereon. Subject to the provisions for registration endorsed hereon, nothing contained in this bond or in the Authorizing Ordinance shall affect or impair the negotiability of this bond and this bond shall be deemed a negotiable instrument under the laws of the State of Arkansas and is issued with the intent that the laws of the State of Arkansas will govern its construction.

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 the bonds does not exceed any constitutional or statutory limitation; and that sufficient revenues derived from the operation of the System

have been pledged to and will be set aside into the Bond Fund, for the payment of the principal of and interest on the bonds.

This bond shall not be valid until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the City of Conway, Arkansas, by its City Council, has caused this bond to be executed by the facsimile signature of the Mayor, the manual signature of the City Clerk, and its corporate seal to be affixed, and has caused the interest coupons attached to be executed by the facsimile signature of the Mayor, all as of the first day of October, 1976.

CITY OF CONWAY, ARKANSAS

ATTEST:

By (facsimile signature)
Mayor

City Clerk

(SEAL)

(Form of Coupon)

\$

No. _____

April

On the first day of October, 19____, the City of Conway, Arkansas, unless the bond to which this coupon is attached is paid prior thereto, hereby promises to pay to bearer solely out of the fund specified in the bond to which this coupon is attached

DOLLARS

in lawful money of the United States of America, at the principal office of First National Bank, Conway, Arkansas, being six (6) months interest then due on its Sewer Revenue Bond, dated October 1, 1976, and numbered _____.

CITY OF CONWAY, ARKANSAS

By _____ (facsimile signature)
Mayor

On each bond shall appear the following:

CERTIFICATE OF AUTHENTICATION

This is one of the bonds of the City of Conway, Arkansas Sewer Revenue Bonds, dated October 1, 1976, and aggregating \$2,902,000 in principal amount described in the bond to which this Certificate is attached.

FIRST NATIONAL BANK
Conway, Arkansas

By _____
Authorized Signature

PROVISIONS FOR REGISTRATION AND RECONVERSION

This Bond may be registered as to principal alone on books of the City, kept by the Trustee under the within mentioned Indenture as bond registrar, upon presentation hereof to the bond registrar, which shall make mention of such registration in the registration blank below, and this Bond may thereafter be transferred only upon an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the bond registrar, such transfer to be made on such books and endorsed hereon by the bond registrar. Such transfer may be to bearer, and thereafter transferability by delivery shall be restored, but this Bond shall again be subject to successive registrations and transfers as before. The principal of this Bond, if registered, unless registered to bearer, shall be payable only to or upon the order of the registered owner or his legal representative. Interest accruing on this Bond will be paid only on presentation and surrender of the attached interest coupons as they respectively become due, and notwithstanding the registration of this Bond as to principal, the appurtenant interest coupons shall remain payable to bearer and shall continue to be transferable by delivery; provided, that if upon registration of this Bond, or at any time thereafter while this Bond is registered in the name of the owner, the unmatured coupons attached evidencing interest to be thereafter paid hereon shall be surrendered to said bond registrar, a statement to that effect will be endorsed hereon by the bond registrar and thereafter interest evidenced by such surrendered coupons may be paid by check or draft of the bond registrar at the times provided herein to the registered owner of this Bond by mail to the address shown on the registration books. This Bond when so converted into a Bond registered as to both principal and interest may be reconverted into a coupon Bond at the written request of the registered owner and upon presentation at the office of said bond registrar. Upon such reconversion the coupons representing the interest to become due

Section 6. The rates to be charged for the services furnished by the System heretofore fixed by Ordinance No. 0-76-18, adopted and approved August 10, 1976, of the City and the conditions, rights and obligations pertaining thereto, as set forth in that Ordinance, are hereby ratified, confirmed and continued.

The City covenants and agrees that the rates shall never be reduced while any of the bonds are outstanding, and, if necessary, from time to time, shall be increased to that amount which will produce net revenues (net revenues being defined as gross revenues less the expenses of operation and maintenance of the System, including all expense items properly attributable to the operation and maintenance of the System under generally accepted accounting principles applicable to municipal sewer systems) at least sufficient to pay the principal, interest and Trustee's and Paying Agent's fees when due, on all bonds to which System revenues are pledged, establish and maintain required reserves, make required deposits into the Depreciation Fund, and otherwise comply with the provisions of ordinances authorizing bonds.

Section 7. The 1960 Bonds were authorized and are secured pursuant to the provisions of Ordinance No. A-352 and the 1967 Bonds were authorized and are secured pursuant to the provisions of Ordinance No. A-447, which Ordinances confirm and continue the funds created pursuant to Ordinance No. A-265, adopted and approved June 12, 1951 ("Ordinance No. A-265"), as amended by Ordinance No. A-352 and Ordinance No. A-447. The funds provided for in Ordinance No. A-265, Ordinance No. A-352 and Ordinance No. A-447 shall continue to be maintained by the City as required by and pursuant to the provisions of those Ordinances. Also, all covenants, restrictions, conditions and provisions set forth in those Ordinances, except where expressly inconsistent with the provisions of this Ordinance, are hereby, each and all, ratified and confirmed, and shall continue in force and inure to the security and benefit of the bonds of this issue, as fully and as effectively as if herein set out in full, it being the intention of this Section to give the bonds of this issue the full benefit of all such covenants, restrictions, conditions and provisions as

well as the full benefits of all applicable provisions of the Constitution and laws of the State of Arkansas, subject to the priority of lien and pledge in favor of the 1960 Bonds and the 1967 Bonds so long as any of the 1960 Bonds and 1967 Bonds are outstanding. Any funds remaining in the Sewer Fund after making all required payments into other funds as required by Ordinance No. A-265, Ordinance No. A-352 and Ordinance No. A-447 and this Ordinance may be used only as provided in Section 15 of Ordinance No. A-265 and Section 11 of Ordinance No. A-447.

Section 8. 1976 Sewer Revenue Bond Fund. (a) After making the required deposits from the Sewer Fund created by Section 10 of Ordinance No. A-265 into the Sewer Operation and Maintenance Fund created by Section 11 of Ordinance No. A-265, into the Sewer Revenue Bond Fund created by Section 12 of Ordinance No. A-265, as amended by Section 9 of Ordinance No. A-352, and into the 1967 Sewer Revenue Bond Principal and Interest Fund created by Section 9 of Ordinance No. A-447, there shall be paid into a special fund in the name of the City designated "1976 Sewer Revenue Bond Fund" (the "Bond Fund") which is hereby established with a bank or banks that are members of the Federal Deposit Insurance Corporation, to be designated by the City from time to time, and which shall be maintained so long as the bonds are outstanding and unpaid, the sums in the amounts and at the time hereinafter set forth in subparagraph (b) for the purpose of providing funds for the payment of the principal of, interest on and Trustee's and Paying Agent's fees in connection with the bonds as the same become due or at redemption prior to maturity according to the following schedule:

<u>YEAR</u> (OCT 1)	<u>BOND</u> <u>NOS.</u>	<u>RATE</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>		<u>TOTAL</u>
				<u>APRIL 1</u>	<u>OCTOBER 1</u>	
1977				90,343.75	90,343.75	\$180,687.50
1978	1 - 8		\$ 32,000	90,343.75	90,343.75	212,687.50
1979	9 - 14		30,000	89,543.75	89,543.75	209,087.50
1980	15 - 21	5.00%	35,000	88,793.75	88,793.75	212,587.50
1981	22 - 28		35,000	87,918.75	87,918.75	210,837.50
1982	29 - 35		35,000	87,043.75	87,043.75	209,087.50
1983	36 - 45		50,000	86,168.75	86,168.75	222,337.50
1984	46 - 55	5 1/4%	50,000	84,856.25	84,168.75	219,712.50
1985	56 - 65		50,000	83,543.75	83,543.75	217,087.50
1986	66 - 78		65,000	82,231.25	82,231.25	229,462.50
1987	79 - 92		70,000	80,525.00	80,525.00	231,050.00
1988	93 - 107	5 1/2%	75,000	78,600.00	78,600.00	232,200.00
1989	108 - 122		75,000	76,537.50	76,537.50	228,075.00
1990	123 - 148		130,000	74,475.00	74,475.00	278,950.00
1991	149 - 176	6.00%	140,000	70,575.00	70,575.00	281,150.00
1992	177 - 206		150,000	66,375.00	66,375.00	282,750.00
1993	207 - 238		160,000	61,875.00	61,875.00	283,750.00
1994	239 - 272		170,000	57,075.00	57,075.00	284,150.00
1995	273 - 308	6 1/2%	180,000	51,550.00	51,550.00	283,100.00
1996	309 - 347		195,000	45,700.00	45,700.00	286,400.00
1997	348 - 388		205,000	39,362.50	39,362.50	283,725.00
1998	389 - 432		220,000	32,495.00	32,495.00	284,990.00
1999	433 - 479	6.70%	235,000	25,125.00	25,125.00	285,250.00
2000	480 - 529		250,000	17,252.50	17,252.50	284,505.00
2001	530 - 582		265,000	8,877.50	8,877.50	282,755.00

(b) There shall be paid from the Sewer Fund to the Bond Fund, (1) beginning on the first business day of the month of April, 1977, and continuing on the first business day of each month thereafter until all outstanding bonds of this issue with interest thereon have been paid in full, or provisions made for such payment, a sum equal to one-sixth (1/6) of the next installment of interest on the bonds, and an amount sufficient to provide for the Trustee's and Paying Agent's fees, on all outstanding bonds, and (2) beginning on the first business day of the month of October, 1977, and continuing on the first business day of each month thereafter until all outstanding bonds of the issue have been paid in full, or provision made for such payment, a sum equal to one-twelfth (1/12) of the next installment of principal of the bonds. Additional amounts of System revenues may be deposited into the Bond Fund each month and used for the purpose of redeeming the bonds if the City so elects but it shall not be mandatory that any additional amounts be so deposited into the Bond Fund.

(c) If the revenues of the System are insufficient to make the required payment on the first business day of the following month into the Bond Fund, then the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the first business day of the next month.

(d) When the aggregate moneys held in the Bond Fund and the 1976 Bond and Interest Reserve Fund (hereinafter created) shall be and remain sufficient to pay the principal of and interest on all bonds then outstanding, and the Trustee's and Paying Agent's fees, the City shall not be obligated to make any further payments into the Bond Fund.

(e) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bonds and the Trustee's and Paying Agent's fees, except as herein specifically provided. If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments during the succeeding twelve months on all outstanding bonds, and the Trustee's and Paying Agent's fees, such surplus may be applied

to the payment of the principal of and interest on any bonds that may be called for redemption prior to maturity.

(f) It shall be the duty of the Treasurer to withdraw from the Bond Fund at least ten (10) days before the maturity date of any bond or interest coupon issued hereunder and to deposit with the Paying Agent an amount equal to the amount of such bond or coupon for the sole purpose of paying the same, together with the customary Paying Agent's fees, and no withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance.

(g) The bonds shall be specifically secured by a pledge of all the revenues required to be placed into the Bond Fund and into the 1976 Bond and Interest Reserve Fund. This pledge in favor of the bonds is hereby irrevocably made according to the terms of this Ordinance, and the City and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

Section 9. 1976 Bond and Interest Reserve Fund. After making the deposits required to be made pursuant to Section 8 hereof, there shall be paid from the Sewer Fund into a special fund in the name of the City designated "1976 Bond and Interest Reserve Fund" (the "Reserve Fund") which is hereby established with a bank or banks that are members of the Federal Deposit Insurance Corporation, to be designated by the City from time to time, and which shall be maintained so long as the bonds are outstanding and unpaid, commencing on the first business day in the month of September, 1978, and continuing on the first business day of each month thereafter until there shall have been accumulated in the required amount of \$200,000, monthly payments of \$2,000. When the Reserve Fund has been established in the required amount, the monthly deposits of \$2,000 shall cease, but in the event the moneys in the Reserve Fund fall below the required amount, the monthly deposits of \$2,000 shall be resumed until the impairment is cured. The moneys in the Reserve Fund shall be used to the extent necessary in the payment

of principal of and interest on the bonds, but the Reserve Fund shall be reimbursed from the Sewer Fund before any of the moneys in the Sewer Fund shall be used for any other purpose except for making the payments hereinabove required in Section 8. The Reserve Fund shall be used solely as herein provided. Moneys in the Reserve Fund that are in excess of the required level may be transferred to the Bond Fund.

Section 10. Section 13 of Ordinance No. A-265 creates a Sewer Depreciation Fund ("Depreciation Fund") and covenants that there shall be paid into the Depreciation Fund on the first business day of each month 5% of the gross revenue of the System, which provision is confirmed and continued by Ordinance No. A-352 and by Ordinance No. A-447. This covenant shall inure to the benefit of the holders of the bonds herein authorized, and such monthly payments shall continue to be made after making all deposits hereinabove provided for, until the Depreciation Fund has been accumulated in the required amount of \$50,000. When the Depreciation Fund has been accumulated in the required amount, monthly deposits shall (subject to compliance with requirements in favor of the 1960 Bonds and 1967 Bonds so long as they are outstanding) cease, but shall be resumed as necessary to restore the Depreciation Fund to the required level in the event of withdrawals therefrom. Surplus revenues in the Depreciation Fund over the required amount may be deposited into the Reserve Fund.

Section 11. The bonds shall be subject to redemption prior to maturity in accordance with the terms set out in the face of the bond form in Section 5 of this Ordinance.

Section 12. That when the bonds have been executed by the Mayor and City Clerk and the seal of the City impressed, as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to the purchaser upon payment of the purchase price and accrued interest from the date of the bonds to delivery ("total sale proceeds").

The total sale proceeds shall be handled and disbursed as follows:

(1) The sum of \$90,343.75, being a sum equal to the interest on the bonds that will become due on April 1, 1977, shall be deposited in the Bond Fund.

(2) The remaining balance of the total sale proceeds shall be deposited in a special account of the City designated "Construction Fund" ("Construction Fund") to be established in a bank that is a member of the Federal Deposit Insurance Corporation selected by the City. The Construction Fund shall be disbursed solely in payment of costs and expenses of accomplishing the improvements, including, without limitation, engineering, legal, expenses of issuing the bonds, interest on the bonds during the construction period, and other expenses, but only on warrants, checks or vouchers signed by the General Manager of the System and one other person designated by the Corporation briefly specifying the nature of the disbursement or expenditure, and accompanied by a certificate signed by the consulting engineer that the obligation has been incurred and to whom it is owed, except that no such certificate shall be required before payment of engineering fees, legal fees, interest on the bonds during the construction period, and the expenses of issuing the bonds. The depository of the Construction Fund shall execute an agreement to comply with the provisions of this Subsection.

The City covenants that if, for any reason, moneys on deposit in the Bond Fund are at any time insufficient to pay as due any principal of or interest on the bonds the City will promptly withdraw from the Construction Fund and deposit in the Bond Fund the amount necessary, together with any other moneys then on deposit in the Bond Fund, to pay such maturing principal or interest.

When the construction of the improvements to the System has been completed, this fact shall be evidenced by the filing with the Trustee and with the depository in which the Construction Fund is deposited of a certificate signed by the General Manager of the System and by the consulting engineer.

Upon receipt of the above-described certificate, the depository with which the Construction Fund is deposited shall pay or transfer any remaining balance pursuant to the written direction or check signed by the General Manager of the System and the other person designated by the Corporation for signing checks on the Construction Fund. Such balance may be either (i) used to redeem bonds prior to maturity, or (ii) deposited into the Reserve Fund.

Section 13. (a) Moneys held for the credit of the Construction Fund or any other fund may be invested and reinvested pursuant to the direction of the City in (1) direct obligation of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States Government, or (2) Certificates of Deposit of banks that are secured by obligations described in (1). The obligations and certificates described in (1) and (2) will be collectively referred to as "Permitted Investments."

(b) Reserve Fund moneys may be invested in Permitted Investments maturing in not more than ten (10) years. Money in any other fund may be invested in Permitted Investments which mature or are subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys held for the credit of the applicable fund will be required for the purposes intended.

(c) Investments shall be deemed at all times a part of the applicable fund and interest accruing thereon and profit realized from investments shall be credited to the applicable fund, and losses resulting from investments shall be charged to the applicable fund.

Section 14. As long as any of the bonds are outstanding, the City shall not issue or attempt to issue any bonds having or claimed to be entitled to a priority of lien on the revenues of the System over the lien securing the bonds, including any and all future extensions, betterments and improvements to the System.

Nothing herein shall be construed in any manner to prevent the issuance by the City of additional revenue bonds to finance or pay the cost of constructing

extensions, betterments and improvements to the System; however, any such additional bonds shall not be issued on a parity with the outstanding bonds of this issue unless and until there shall have been procured and filed in the office of the City Clerk a statement by a certified public accountant not in the regular employ of the City reciting the opinion that the net revenues (net revenues being gross revenues of the System less operation and maintenance expenses) of the System for the fiscal year preceding the year in which such parity bonds are to be issued were not less than 130% of the average annual debt service requirements (principal, interest and Trustee's and Paying Agent's fees) on all outstanding bonds to which the revenues of the System are pledged and the bonds then proposed to be issued. The additional bonds, the issuance of which is restricted and conditioned by this Section, shall be understood to mean bonds payable from the revenues of the System on a parity with these bonds and shall not be deemed to include other obligations, the security and source of payment of which is subordinate and subject to the priority of these bonds.

Section 15. The City covenants to keep proper books of account (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the System. The City further covenants to employ a firm of independent certified public accountants to prepare annual audits covering the operations of the System. A copy of these annual audits will be filed with the Trustee.

Section 16. The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the 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(d) of the Internal Revenue Code of 1954, as amended.

Section 17. 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.

Section 18. All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 19. This Ordinance shall constitute a contract between the City and the bondholders but no rights of any kind shall arise until the bonds authorized herein are issued and delivered.

Section 20. It is hereby ascertained and declared that the improvements must be accomplished as soon as possible in order to make the System adequate for the needs of the City and its inhabitants, without which the life, health, safety and welfare thereof are jeopardized, and that the issuance of the bonds and the taking of the other action authorized by this Ordinance is necessary for the accomplishment thereof. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage.

PASSED: September 14, 1976

ATTEST:

APPROVED:

Doris J. ...
City Clerk

Jim A. Hoggard
Mayor

(SEAL)