

*Step Cabby*

ORDINANCE NO. 0-78-5

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SEWER REVENUE REFUNDING BONDS FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS; 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

WHEREAS, the City has outstanding the following issues of bonds which are secured by pledges of revenues derived from the System:

(1) Sewer Revenue Bonds, dated February 1, 1960 (the "1960 Bonds");

(2) Sewer Revenue Bonds, dated February 1, 1967 (the "1967 Bonds"); and

(3) Sewer Revenue Bonds, in the principal amount of \$2,902,000, dated October 1, 1976 (the "1976 Bonds"); and

WHEREAS, the City Council of the City has determined that by the issuance of revenue bonds for the refunding of the 1976 Bonds the City will realize substantial debt service savings; and

WHEREAS, the City is authorized to issue refunding bonds under the Constitution and laws of the State of Arkansas, including Act No. 132 of 1933, as amended, Act No. 297 of 1937, as amended, and Act No. 145 of 1967, as amended; and

WHEREAS, the City has determined that in order to provide sufficient moneys for the refunding of the 1976 Bonds it is necessary to sell and issue \$3,050,000 in principal amount of Sewer Revenue Refunding Bonds (the "bonds") and has made the necessary arrangements to sell the bonds to Harrow Smith Company, Little Rock, Arkansas (the "purchaser"), at a price of 98¢ on the dollar and accrued interest for bonds bearing interest at the rates of 3.75%, 4%, 4.25%, 4.30%, 4.40%, 4.50%, 4.60%, 4.70%, 4.80%, 4.90%, 5%, 5.10%, 5.20%, 5.30%, 5.40%, 5.50%, 5.70%, 5.80% and 6.125% per annum;

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

Section 1. The refunding of the 1976 Bonds is hereby authorized. The 1976 Bonds shall be redeemed on October 1, 1986, and the Mayor is authorized and directed to give the required notice of redemption.

Section 2. It is hereby found and declared that the period of usefulness of the System is more than forty (40) years.

Section 3. Under the authority of the Constitution and laws of the State of Arkansas, City of Conway, Arkansas Sewer Revenue Refunding Bonds are hereby authorized and ordered issued in the total principal amount of \$3,050,000. The bonds shall be dated March 1, 1978, shall mature serially on October 1 in each of the years 1978 to 2001, inclusive, and shall bear interest payable on October 1, 1978, and semiannually thereafter on April 1 and October 1, at the following rates: Bonds Nos. 1 to 8, inclusive, maturing in the year 1978, bear interest at the rate of 3.75% per annum; Bonds Nos. 9 to 17, inclusive, maturing in the year 1979, bear interest at the rate of 4% per annum; Bonds Nos. 18 to 27, inclusive, maturing in the year 1980, bear interest at the rate of 4.25% per annum; Bonds Nos. 28 to 37, inclusive, maturing in the year 1981, bear interest at the rate of 4.30% per annum; Bonds Nos. 38 to 47, inclusive, maturing in the year 1982, bear interest at the rate of 4.40% per annum; Bonds Nos. 48 to 60, inclusive, maturing in the year 1983, bear interest at the rate of 4.50% per annum; Bonds Nos. 61 to 73, inclusive, maturing in the year 1984,

bear interest at the rate of 4.60% per annum; Bonds Nos. 74 to 87, inclusive, maturing in the year 1985, bear interest at the rate of 4.70% per annum; Bonds Nos. 88 to 103, inclusive, maturing in the year 1986, bear interest at the rate of 4.80% per annum; Bonds Nos. 104 to 121, inclusive, maturing in the year 1987, bear interest at the rate of 4.90% per annum; Bonds Nos. 122 to 140, inclusive, maturing in the year 1988, bear interest at the rate of 5% per annum; Bonds Nos. 141 to 159, inclusive, maturing in the year 1989, bear interest at the rate of 5.10% per annum; Bonds Nos. 160 to 189, inclusive, maturing in the year 1990, bear interest at the rate of 5.20% per annum; Bonds Nos. 190 to 221, inclusive, maturing in the year 1991, bear interest at the rate of 5.30% per annum; Bonds Nos. 222 to 255, inclusive, maturing in the year 1992, bear interest at the rate of 5.40% per annum; Bonds Nos. 256 to 329, inclusive, maturing in the years 1993 and 1994, bear interest at the rate of 5.50% per annum; Bonds Nos. 330 to 369, inclusive, maturing in the year 1995, bear interest at the rate of 5.70% per annum; Bonds Nos. 370 to 412, inclusive, maturing in the year 1996, bear interest at the rate of 5.80% per annum; and Bonds Nos. 413 to 610, inclusive, maturing in the years 1997 to 2001, inclusive, bear interest at the rate of 6.125% per annum. The bonds shall be in the denomination of \$5,000 each and shall be numbered consecutively from 1 to 610, 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 Union National Bank of Little Rock, Little Rock, 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 1978 Sewer Revenue Refunding 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:

(Form of Bond)

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

\_\_\_\_% SEWER REVENUE REFUNDING BOND

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

\$5,000

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 Bond Fund provided as hereinafter set forth, the principal sum of

FIVE THOUSAND DOLLARS

in lawful money of the United States of America on the first day of October, \_\_\_\_, 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 October 1, 1978. Principal and interest are payable at the principal office of Union National Bank of Little Rock, Little Rock, 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 six hundred ten (610) bonds, aggregating Three Million Fifty Thousand Dollars (\$3,050,000), dated March 1, 1978, all of like tenor and effect except as to number, rate of interest, maturity and right of redemption prior to maturity (the "bonds"), issued for the purpose of refunding bonds previously issued and 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, Act No. 297 of 1937, as amended, and Act No. 145 of 1967, 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 Sewer System of the City (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 \_\_\_\_\_, 1978 (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 "1978 Sewer Revenue Refunding Bond Fund" ("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 for the depreciation of the System 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 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 other source, on any interest payment date on and after October 1, 1988, 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 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 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 alone 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 Mayor and City Clerk thereof (with the facsimile signature of the Mayor and the manual signature of the City Clerk), and its corporate seal to be affixed or imprinted, and has caused the interest coupons attached to be signed by the facsimile signature of the Mayor, all as of the first day of March, 1978.

CITY OF CONWAY, ARKANSAS

ATTEST:

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

(SEAL)

By (facsimile signature)  
Mayor

(Form of Coupon)

\$

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

On the first day of (April)(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 Bond 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 Union National Bank of Little Rock, Little Rock, Arkansas, being six (6) months interest then due on its Sewer Revenue Refunding Bond, dated March 1, 1978, 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 Refunding Bonds, dated March 1, 1978, and aggregating \$3,050,000 in principal amount described in the bond to which this Certificate is attached.

UNION NATIONAL BANK OF LITTLE ROCK  
Little Rock, 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 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 thereafter to the date of maturity will again be



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. 1978 Sewer Revenue Refunding 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 "1978 Sewer Revenue Refunding 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. Principal and interest becomes due according to the following schedule:

YEAR	PRINCIPAL	BOND NOS.	INTEREST RATE	INTEREST		TOTAL
				APRIL 1	OCTOBER 1	
1978	\$ 40,000	1- 8	3.75%		\$ 97,499.79	\$137,499.79
1979	45,000	9- 17	4.00%	\$82,821.25	82,821.25	210,642.50
1980	50,000	18- 27	4.25%	81,921.25	81,921.25	213,842.50
1981	50,000	28- 37	4.30%	80,858.75	80,858.75	211,717.50
1982	50,000	38- 47	4.40%	79,783.75	79,783.75	209,567.50
1983	65,000	48- 60	4.50%	78,683.75	78,683.75	222,367.50
1984	65,000	61- 73	4.60%	77,221.25	77,221.25	219,442.50
1985	70,000	74- 87	4.70%	75,726.25	75,726.25	221,452.50
1986	80,000	88-103	4.80%	74,081.25	74,081.25	228,162.50
1987	90,000	104-121	4.90%	72,161.25	72,161.25	234,322.50
1988	95,000	122-140	5.00%	69,956.25	69,956.25	234,912.50
1989	95,000	141-159	5.10%	67,581.25	67,581.25	230,162.50
1990	150,000	160-189	5.20%	65,158.75	65,158.75	280,317.50
1991	160,000	190-221	5.30%	61,258.75	61,258.75	282,517.50
1992	170,000	222-255	5.40%	57,018.75	57,018.75	284,037.50
1993	180,000	256-291	5.50%	52,428.75	52,428.75	284,857.50
1994	190,000	292-329	5.50%	47,478.75	47,478.75	284,957.50
1995	200,000	330-369	5.70%	42,253.75	42,253.75	284,507.50
1996	215,000	370-412	5.80%	36,553.75	36,553.75	288,107.50
1997	225,000	413-457	6.125%	30,318.75	30,318.75	285,637.50
1998	235,000	458-504	6.125%	23,428.12	23,428.13	281,856.25
1999	250,000	505-554	6.125%	16,231.25	16,231.25	282,462.50
2000	265,000	555-607	6.125%	8,575.00	8,575.00	282,150.00
2001	15,000	608-610	6.125%	459.38	459.37	15,918.75

(b) There shall be paid from the Sewer Fund into the Bond Fund, (1) beginning on the first business day of the month of April, 1978, 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 April, 1978, and continuing on the first business day of the month of each month thereafter to and including the month of September, 1978, a sum equal to one-sixth (1/6) of the next installment of principal of the bonds, and (3) beginning on the first business day in the month of October, 1978, 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 1978 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 as due 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, during the succeeding twelve months, for making principal and interest payments on all outstanding bonds, and paying 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 principal or interest on any bond issued hereunder and to deposit with the Trustee an amount equal to the amount of such principal or interest for the sole purpose of paying the same, together with the customary Trustee's and 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 1978 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. 1978 Bond and Interest Reserve Fund. There is hereby established a special fund in the name of the City designated "1978 Bond and Interest Reserve Fund" (the "Reserve Fund") which shall be maintained with a bank or banks that are members of the Federal Deposit Insurance Corporation, to be designated by the City from time to time. The Reserve Fund shall be maintained so

long as the bonds are outstanding and unpaid. After making the monthly deposits required by Section 8, the City shall make monthly payments of \$2,000 each from the Sewer Fund to the Reserve Fund, 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 Reserve Fund the required amount of \$200,000. 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 required payments into the Sewer Operation and Maintenance Fund, the Sewer Revenue Bond Fund, the 1967 Sewer Revenue Bond Principal and Interest Fund, and the Bond Fund. 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. Upon delivery of the bonds to the purchaser, (a) all moneys and investments held in the 1976 Sewer Revenue Bond Fund created by the Ordinance authorizing the 1976 Bonds (Ordinance No. 0-76-31) shall be transferred to the Bond Fund, (b) all moneys and investments held in the 1976 Bond and Interest Reserve Fund created by Ordinance No. 0-76-31 shall be transferred to the Reserve Fund, and (c) said funds created by Ordinance No. 0-76-31 shall be terminated.

Section 12. 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 13. When the bonds have been executed and the seal of the City impressed or imprinted as herein provided, they shall be delivered to the Trustee and the Trustee shall authenticate them and deliver them to the purchaser upon payment of the purchase price of \$2,989,000, plus accrued interest from March 1, 1978, to the date of delivery ("bond proceeds"). The purchase price shall be paid in immediately available funds. The bond proceeds or a sufficient amount thereof, shall be deposited in trust with the Trustee as Escrow Agent under an Escrow Agreement between the City and the Escrow Agent. The Escrow Agreement shall provide that the Escrow Agent will, to the extent practicable invest the moneys deposited under the Escrow Agreement ("Escrow Fund") in Government Securities (hereby defined as direct obligations of, or obligations the principal of and interest on which are fully guaranteed by, the United States of America, including obligations issued or held in book-entry form on books of the Department of the Treasury of the United States of America) maturing and bearing interest so as to provide, together with uninvested cash in the Escrow Fund, moneys at times and in amounts sufficient to pay as due all principal of, interest on and trustee's and paying agent's fees in connection with the 1976 Bonds, and all costs and

expenses in connection with the Escrow Agreement. The 1976 Bonds shall be redeemed in full on October 1, 1986, and principal and interest maturing on or prior to the redemption date shall be paid at maturity. All bond proceeds not deposited with the Escrow Agent shall be deposited in the Bond Fund.

The Escrow Agreement shall provide for the application of the Escrow Fund solely to the payment of principal of, interest on, and trustee's and paying agent's fees in connection with, the 1976 Bonds, and costs and expenses of carrying out the Escrow Agreement. Any surplus remaining in the Escrow Fund after retirement of all 1976 Bonds and payment of all costs and expenses in connection with the Escrow Agreement shall be deposited in the Sewer Fund.

The Escrow Agent is authorized and directed, for and on behalf of the City, to subscribe for and purchase Government Securities to constitute a part of the Escrow Fund, as in this Section provided.

The Mayor is authorized and directed, for and on behalf of the City, to execute and deliver the Escrow Agreement and to execute and deliver such other documents and take such other action as may be required to cause the Escrow Agreement to be executed and delivered and the necessary moneys and Government Securities to be subscribed for, acquired, and placed in the Escrow Fund.

Section 14. (a) Moneys held for the credit of the Bond Fund may be invested and reinvested pursuant to the direction of the City in (1) direct obligations 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.

(c) Moneys 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.

(d) 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 15. 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 16. 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 17. The Construction Fund created by Section 12 of the Ordinance authorizing the 1976 Bonds (Ordinance No. 0-76-31) shall continue to be maintained and expenditures made therefrom to complete the System improvements for which the 1976 Bonds were issued, in full conformity with the applicable provisions of Ordinance No. 0-76-31.

Section 18. If the City shall pay or cause to be paid to the holders and owners of the bonds and coupons the principal, premiums, if any, and interest to become due thereon at the times and in the manner stipulated therein, and if the City shall keep, perform and observe all and singular the covenants and promises in the bonds and in this Ordinance expressed as to be kept, performed and observed by it on its part, then all obligations of the City to the Trustee and to the holders and owners of the bonds and coupons, and all rights of the Trustee and of the holders and owners of the bonds and coupons against the City and against the System and its revenues, shall cease and the Trustee shall deliver to the City any money or property which may then be in its possession pursuant to this Ordinance, except cash or Government Securities held by it for the payment of the principal of, premiums, if any, and interest on the bonds.

Bonds and coupons for the payment or redemption of which moneys or Government Securities (defined as direct obligations of, or obligations the principal of and interest on which are fully guaranteed by, the United States of America, including obligations issued or held in book-entry form on books of the Department of the Treasury of the United States of America) maturing on or prior to the maturity or redemption date of the bonds shall have been deposited with the Trustee (whether upon or prior to the maturity

or the redemption date of such bonds) shall be deemed to be paid within the meaning of this Ordinance; provided, however, that if such bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or arrangements satisfactory to the Trustee must have been made for the giving of such notice. 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.

The City may at any time surrender to the Trustee for cancellation by it any bonds previously authenticated and delivered hereunder, together with any unpaid coupons thereto belonging, which the City may have acquired in any manner whatsoever, and such bonds and coupons, upon such surrender and cancellation, shall be deemed to be paid and retired.

Section 19. 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(c) of the Internal Revenue Code of 1954, as amended.

Section 20. 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 21. All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 22. 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 23. It is hereby ascertained and declared that in order to insure the debt service savings contemplated by the refunding of the 1976 Bonds it is essential that the City proceed without delay to issue and deliver the bonds herein authorized. 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: February 14, 1978.

APPROVED:

ATTEST:

X April Dunn  
City Clerk

X John A. Hoggard  
Mayor

(SEAL)