

ORDINANCE NO. 0-90-17

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

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 Subchapter 2 of Chapter 234, Title 14, Arkansas Code of 1987 Annotated.

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

"Additional Parity Bonds" means Outstanding Bonds issued after the date of issuance of the Series 1990 Bonds on a parity of lien, pledge and security with the Series 1990 Bonds.

"Bond Fund" means the Series 1986 Bond Fund created by Section 7 of Ordinance No. 0-86-21.

"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 Ordinance No. 0-86-21.

"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 Series 1990 Bonds (after giving effect to Mandatory Redemption Requirements), or (2) 1.25 times average annual debt service in all subsequent Fiscal Years, on all Series 1986 Bonds, Series 1990 Bonds and Additional Parity Bonds.

"Depreciation Fund" means the fund by that name referred to in Section 7 of Ordinance No. 0-86-21.

"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 Series 1990 Bond. The Interest Commencement Date for all Series 1990 Bonds initially issued shall be the dated date of the Series 1990 Bonds. The Interest Commencement Date for any Series 1990 Bond authenticated and delivered thereafter in exchange or substitution for another Series 1990 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 Ordinance No. 0-86-21.

"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 Ordinance No. 0-86-21.

"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 Investments 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 to the System being financed with the proceeds of the Series 1990 Bonds. The Project is described generally as improvements to the water storage facilities of the System.

"Rate Covenant" means the covenant of the City set out in Section 5(c) 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 had been issued and were outstanding on the date of adoption of Ordinance No. 0-86-21, 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.

"Series 1986 Bonds" means the City of Conway, Arkansas Water Revenue Bonds, Series 1986, issued under Ordinance No. 0-86-21, as amended and supplemented.

"Series 1990 Bonds" means the City of Conway, Arkansas Water Revenue Bonds, Series 1990, issued under this ordinance, as amended and supplemented.

"Subordinate Bonds" means Outstanding Bonds issued after the date of issuance of the Series 1990 Bonds, the lien, pledge and security of which are expressly made subordinate to the lien, pledge and security in favor of the Series 1990 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 any Series 1990 Bonds, Series 1986 Bonds or Additional Parity Bonds so designated by the City.

"Trustee" means the original Trustee for the holders of the Series 1990 Bonds or its successor as Trustee, designated in or in accordance with the provisions of Section 13 of this Ordinance.

(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 Requirements 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. The employment of the Corporation to manage the System is 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 the Project is necessary in order to continue 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. Preliminary plans and cost estimates for the Project have been submitted by the Consulting Engineer and are on file in the office of the Corporation and available for public inspection. The estimated cost of the Project, including costs of issuing bonds, funding a debt service reserve for the bonds and paying interest during the construction period, is \$1,600,000.

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

Section 3. The Series 1990 Bonds. (a) The issuance of the Series 1990 Bonds is hereby authorized on the terms and conditions provided in this Ordinance. The Series 1990 Bonds will be issued under the authority of the Constitution and laws of the State of Arkansas, including particularly the Act.

(b) The Series 1990 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 original purchaser or purchasers, but may be exchanged for bonds in other authorized denominations as



hereafter provided. The Series 1990 Bonds shall be numbered from R-1 upward in order of issuance.

(c) Each Series 1990 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.

(d) No charge shall be made to any bondholder for the privilege of registration, but any bondholder requesting 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.

(e) 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 the 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.

(f) The Series 1990 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 Series 1990 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 Series 1990 Bonds, but the pledge is subject and subordinate to prior pledges in favor of the Senior Debt. The pledge is on a parity of security with the pledge in favor of the Series 1986 Bonds.

(g) The Series 1990 Bonds shall be subject to redemption prior to maturity as provided by subsequent ordinance.

Section 4. Delivery of Bonds; Application of Proceeds.

(a) The Series 1990 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 purchaser or purchasers upon payment of the purchase price.

(b) The Trustee shall deposit in the Bond Fund a sum equal to the accrued interest on the Bonds plus additional capitalized interest as specified by subsequent ordinance.

(c) The Trustee shall deposit into the Debt Service Reserve Fund the amount specified by subsequent ordinance.

(d) The Trustee shall deposit the balance received from the sale of the Series 1990 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 Series 1990 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 Charaes. (a) The schedule of rates and charges for the System fixed by Ordinance No. 0-85-40 and by Ordinance No. 0-90- as applicable, are hereby ratified and confirmed as the rates and charges for the System.

(b) 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.

(c) 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(c) will be referred to herein as the "Rate Covenant".

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

(a) 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, the Series 1986 Bonds, the Series 1990 Bonds and any Additional Parity Bonds and to the maintenance of the funds established by or provided for in Section 7 of this Ordinance; and

(b) 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 Series 1986 Bonds, the Series 1990 Bonds and any



Additional Parity Bonds, in accordance with the terms of this Ordinance.

Section 7. Flow Of Funds. 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 Series 1966 Bond Fund, the Series 1977 Bond Fund and the Series 1982 Bond Fund (as those terms are defined in Section 7 of Ordinance No. 0-86-21), the monthly deposits required by the ordinances authorizing the Senior Debt.

(2) There shall be paid into the Bond Fund and the Debt Service Reserve, respectively, the amounts required by paragraphs (4) and (5) of Section 7(a) of Ordinance No. 0-86-21. The Series 1990 Bonds shall be deemed "Additional Parity Bonds" under those paragraphs so that principal and interest requirements for the Series 1990 Bonds shall be taken into consideration in determining the amounts of deposits into the Bond Fund and the Debt Service Reserve Fund.

(3) Payments shall be made into the Depreciation Fund and the Operation and Maintenance Fund as required by Section 7(a) of Ordinance No. 0-86-21.

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 conditions specified in Section 8(a) of Ordinance No. 0-86-21.

(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(b) of Ordinance No. 0-86-21 are met.

(c) The City may from time to time issue Subordinate Bonds for any purpose specified in Section 8(a) of Ordinance No. 0-86-21. Subordinate Bonds shall be payable from Revenues remaining each month after required payments into all bond funds for Senior Debt, the Bond Fund and the 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 Series 1990 Bonds.

Section 9. Remedies for Default. (a) If there be any default in the payment of the principal of or interest on any of the Series 1990 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, in Ordinance No. 0-86-21 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 Series 1990 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 Series 1990 Bonds, the Trustee may, and upon the written request of holders of not less than ten percent (10%) in principal amount of the Series 1990 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 payable from Revenues 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. The rights of the Trustee and the holders of the Series 1990 Bonds are subject to the rights of the holders of the Senior Debt and the Series 1986 Bonds.

(b) In the case of a default in the payment of principal of or interest on the Series 1990 Bonds the Trustee may, by notice in writing to the City, declare the entire unpaid principal of the Series 1990 Bonds immediately due and payable.

(c) No holder of any of the Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 Bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 10. Ordinance a Contract. This Ordinance shall, upon the issuance and delivery of the Series 1990 Bonds to the original purchaser or purchasers, constitute a binding contract between the City and the holders of the Outstanding Series 1990 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 Series 1990 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 Series 1990 Bonds, and (2) the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Series 1990 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 Series 1990 Bond or Additional Parity Bond, or (b) a reduction in the principal amount of any Series 1990 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 Series 1990 Bond or Additional Parity Bond over any other Series

1990 Bond or Additional Parity Bond, or (e) a reduction in the aggregate principal amount of the Series 1990 Bonds and Additional Parity Bonds required for consent to such supplemental ordinance.

Section 11. Defeasance. Series 1990 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 12. Miscellaneous. (a) The City Council finds and declares that the period of usefulness of the System is longer than the term of the Series 1990 Bonds.

(b) 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 Series 1990 Bonds and that any person interested may appear before the City Council at its regular meeting on August 14, 1990, 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.

(c) 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.

(d) This Ordinance shall not create any right of any kind and no right of any kind shall arise hereunder pursuant to it until the Series 1990 Bonds shall be issued and delivered.

(e) Ordinance No. 0-86-10 is hereby repealed. All other ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

(f) 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, the Series 1986 Bonds and the Series 1990 Bonds. The lien in favor of the Series



1986 Bonds and the Series 1990 Bonds is subject and subordinate to the prior lien in favor of the Senior Debt.

(g) The covenants and provisions of Ordinance No. 0-86-21, except those clearly inapplicable, are incorporated herein and shall inure to the benefit of the holders of the Series 1990 Bonds.

Section 13. The Trustee. The original Trustee hereunder shall be named by the original purchaser of the Series 1990 Bonds, subject to the approval of the City Council. 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 Series 1990 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 14. Tax Covenants. (a) That the City covenants that it shall not take any action or suffer or permit any action to be taken or conditions to exist which causes or may cause the interest payable on the Series 1990 Bonds to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Series 1990 Bonds and System revenues will not be used directly or indirectly in such manner as to cause the Series 1990 Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The City shall assure that (1) not in excess of ten percent (10%) of the Net Proceeds of the Series 1990 Bonds is used for Private Business Use if, in addition, the payment of more than ten percent (10%) of the principal or ten percent (10%) of the interest due on the Series 1990 Bonds during the term thereof is, under the terms of the Series 1990 Bonds or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of five percent (5%) of the Net Proceeds of the Series 1990 Bonds are used for a Private Business Use, and (B) an amount in excess of five percent (5%) of the principal or five percent (5%) of the interest due on the Series 1990 Bonds during the term thereof is, under the terms of the Series 1990 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for any Private Business Use or in payments in respect of property used or to be used for any Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for any Private Business Use, the excess over such five percent (5%) of Net Proceeds of the Series 1990 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project.

The City shall assure that not in excess of five percent (5%) of the Net Proceeds of the Series 1990 Bonds are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this subsection (b), the following terms shall have the following meanings:

"Net Proceeds" means the face amount of the Series 1990 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, less the amount deposited into the Debt Service Reserve.

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

(c) The Series 1990 Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265 of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 1990 does not and will not exceed \$10,000,000.

The City further represents that (i) the aggregate principal amount of its tax-exempt obligations (not including "private activity bonds" with the meaning of Section 142 of the Code), including those of its subordinate entities, to be issued in calendar year 1990 will not exceed \$5,000,000, and (ii) at least 95% of the proceeds of the Series 1990 Bonds will be expended for the governmental activities of the City.

(d) That the City covenants that it will take no action which would cause the Series 1990 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section 24 shall prohibit investments in bonds issued by the United States Treasury.

(e) The City covenants that it 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 Series 1990 Bonds are issued, a statement required by Section 149(e) of the Code.

PASSED: JULY 27th, , 1990.

ATTEST:

Martha Hutchinson  
City Clerk

APPROVED:

David J. [Signature]  
Mayor

(SEAL)