

ORDINANCE NO. 092-20

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY OF CONWAY, ARKANSAS; AUTHORIZING THE ISSUANCE OF SEWER REVENUE BONDS FOR THE PURPOSE OF FINANCING THE COST OF CONSTRUCTION AND REFUNDING CERTAIN OUTSTANDING SEWER REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE 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 Conway Corporation, an Arkansas nonprofit corporation (the "Corporation"), operates for the City, a sewer system (the "System"), and the City and the Corporation have determined that extensions, betterments and improvements to the System (the "Improvements") should be made in order that the City and its inhabitants may have adequate and proper sewer facilities; and

WHEREAS, the City has issued its Sewer Revenue Bond, dated May 21, 1991 in the principal amount of \$662,500 (the "1991 Bond") in order to finance the planning and design phase of the Improvements; and

WHEREAS, the City has had prepared an engineering report for the Improvements, has obtained preliminary estimates of cost totalling \$13,700,000 for refunding bonds, the Improvements, expenses of issuing bonds and interest during construction, and is prepared to proceed with the construction of the Improvements; and

WHEREAS, in accordance with Ordinance No. 0-91-21 of the City adopted April 9, 1991 (the "1991 Ordinance"), which authorized the issuance of the 1991 Bond, the City proposes to issue permanent and definitive bonds to refund the 1991 Bond (the "Refunding"); and

WHEREAS, the City is making arrangements for the sale of a \$13,700,000 principal amount bond to the Arkansas Development Finance Authority, as purchaser, (the "Bondholder") at a price of par for a bond bearing interest at the rate of 3% per annum pursuant to a Bond Purchase Agreement (the "Agreement") among the City, the Bondholder and the Arkansas Department of Pollution Control and Ecology (the "Department"), which has been presented to and is before this meeting; and

WHEREAS, the City has outstanding an issue of Sewer Revenue Refunding Bonds, dated March 1, 1978 (the "1978 Bonds"), authorized by Ordinance No. 0-78-5, passed and approved February 14, 1978 (the "1978 Ordinance"); and

WHEREAS, the City is authorized, under the provisions of Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987

Annotated (the "Authorizing Legislation"), to enter into the Agreement and to issue the bond; and

WHEREAS, the Bondholder proposes to pledge the bond as collateral for the payment of a series of its wastewater revenue bonds (the "ADFA Bonds") pursuant to a trust indenture between the Bondholder and the bank or trust company to be named as trustee thereunder (the "ADFA Trustee"); and

WHEREAS, the City is required to pay to the Arkansas Development Finance Authority, as servicer (the "Authority"), a servicing fee equal to 1% per annum of the outstanding principal amount of the bond (the "Servicing Fee");

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

Section 1. The Improvements and the Refunding shall be accomplished.

Section 2. The sale to the Bondholder of up to \$13,700,000 in principal amount of a bond from the City at a price of par for a bond bearing interest at the rate of 3% per annum and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby approved and the bond is hereby sold to the Bondholder. The Mayor is hereby authorized and directed to execute and deliver the Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Agreement. The Agreement is hereby approved in substantially the form submitted to this meeting with such changes as may be approved by the Mayor, his execution to constitute complete evidence of such approval.

Section 3. The City Council hereby finds and declares that the period of usefulness of the System after completion of the Improvements will be more than twenty-five (25) years.

Section 4. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly the Authorizing Legislation, City of Conway, Arkansas Sewer Revenue Bond, Series 1992 (the "bond") is hereby authorized and ordered issued in the principal amount of \$13,700,000, the proceeds of the sale of which are necessary to provide sufficient funds for accomplishing the Improvements and the Refunding, paying expenses incidental thereto, paying interest during construction and paying expenses of issuing the bond approved in accordance with the Agreement.

The bond shall bear interest at the rate of 3% per annum based upon a 360-day year of twelve consecutive 30-day months. The bond shall be dated the date of delivery to the Bondholder. Interest only shall be payable on each April 15 and October 15 after the bond is issued to and including April 15, 1995.

Principal shall be payable in installments on October 15, 1995 and on each April 15 and October 15 until the unpaid principal is paid in full as follows:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
10/15/95	\$ 226,813.74	10/15/05	\$ 337,033.29
4/15/96	231,350.02	4/15/06	343,773.96
10/15/96	235,977.02	10/15/06	350,649.44
4/15/97	240,696.56	4/15/07	357,662.43
10/15/97	245,510.49	10/15/07	364,815.68
4/15/98	250,420.70	4/15/08	372,111.99
10/15/98	255,429.12	10/15/08	379,554.23
4/15/99	260,537.70	4/15/09	387,145.31
10/15/99	265,748.45	10/15/09	394,888.22
4/15/00	271,063.42	4/15/10	402,785.98
10/15/00	276,484.69	10/15/10	410,841.70
4/15/01	282,014.38	4/15/11	419,058.54
10/15/01	287,654.67	10/15/11	427,439.71
4/15/02	293,407.76	4/15/12	435,988.50
10/15/02	299,275.92	10/15/12	444,708.27
4/15/03	305,261.44	4/15/13	453,602.44
10/15/03	311,366.67	10/15/13	462,674.49
4/15/04	317,594.00	4/15/14	471,927.98
10/15/04	323,945.88	10/15/14	481,366.54
4/15/05	330,424.80	4/15/15	490,993.87

The bond will be registered as to both principal and interest, payable to the Bondholder, or registered assigns, as set forth hereinafter in the bond form, and shall be numbered R-1.

Payment of principal and interest shall be by check or draft mailed to the Bondholder at its address shown on the bond registration books of the City which shall be maintained by the City Clerk as Bond Registrar, without presentation or surrender of the bond (except upon final payment) and such payments shall discharge the obligation of the City to the extent thereof. The City Clerk shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the bonds have been fully paid, it shall be canceled and delivered to the City Clerk.

Section 5. The bond 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 bond is not a general obligation of the City but is a special obligation, the principal of and interest on which, and the Servicing Fee in connection therewith, are secured by a pledge of and are payable from revenues derived from the

Principal shall be payable in installments on October 15, 1995 and on each April 15 and October 15 until the unpaid principal is paid in full as follows:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
10/15/95	\$ 226,813.74	10/15/05	\$ 337,033.29
4/15/96	231,350.02	4/15/06	343,773.96
10/15/96	235,977.02	10/15/06	350,649.44
4/15/97	240,696.56	4/15/07	357,662.43
10/15/97	245,510.49	10/15/07	364,815.68
4/15/98	250,420.70	4/15/08	372,111.99
10/15/98	255,429.12	10/15/08	379,554.23
4/15/99	260,537.70	4/15/09	387,145.31
10/15/99	265,748.45	10/15/09	394,888.22
4/15/00	271,063.42	4/15/10	402,785.98
10/15/00	276,484.69	10/15/10	410,841.70
4/15/01	282,014.38	4/15/11	419,058.54
10/15/01	287,654.67	10/15/11	427,439.71
4/15/02	293,407.76	4/15/12	435,988.50
10/15/02	299,275.92	10/15/12	444,708.27
4/15/03	305,261.44	4/15/13	453,602.44
10/15/03	311,366.67	10/15/13	462,674.49
4/15/04	317,594.00	4/15/14	471,927.98
10/15/04	323,945.88	10/15/14	481,366.54
4/15/05	330,424.80	4/15/15	490,993.87

The bond will be registered as to both principal and interest, payable to the Bondholder, or registered assigns, as set forth hereinafter in the bond form, and shall be numbered R-1.

Payment of principal and interest shall be by check or draft mailed to the Bondholder at its address shown on the bond registration books of the City which shall be maintained by the City Clerk as Bond Registrar, without presentation or surrender of the bond (except upon final payment) and such payments shall discharge the obligation of the City to the extent thereof. The City Clerk shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the bonds have been fully paid, it shall be canceled and delivered to the City Clerk.

Section 5. The bond 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 bond is not a general obligation of the City but is a special obligation, the principal of and interest on which, and the Servicing Fee in connection therewith, are secured by a pledge of and are payable from revenues derived from the

System ("Revenues"). The pledge of Revenues is subordinate to the pledge in favor of the 1978 Bonds. The bond and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. The bond shall be in substantially the following form and the Mayor and City Clerk are hereby authorized and directed to make all the recitals contained therein:

(form of single registered bond)  
(To be typewritten)

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY  
3.0% SEWER REVENUE BOND, SERIES 1992

No. R-1

\$13,700,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Conway, Faulkner County, Arkansas (the "City"), for value received, hereby acknowledges itself to owe and promises to pay to the Arkansas Development Finance Authority, or registered assigns, solely from the special fund provided as hereinafter set forth, the principal sum of

THIRTEEN MILLION SEVEN HUNDRED THOUSAND DOLLARS  
(or the total principal amount outstanding as reflected  
by the Record of Payment of Advances attached hereto)

with interest on the unpaid balance of the total principal amount at the rate of 3% per annum from the date of each advance. The principal and interest shall be payable in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of debts due the United States of America.

Interest on the unpaid balance of the total principal amount shall be payable on \_\_\_\_\_ 15, 199\_\_ and on each April 15 and October 15 thereafter. Principal shall be payable in installments on October 15, 1995 and each April 15 and October 15 until the unpaid principal is paid in full as follows:

Date

Amount

(There will be inserted the schedule set forth in Section 4 of this Ordinance.)

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the registered owner at his address shown on the bond registration book of the City maintained by the City Clerk as Bond Registrar, and such payments shall fully discharge the obligation of the City to the extent of the payments so made.

This bond is issued for the purpose of providing financing of the costs of constructing extensions, betterments and improvements to the sewer system of the City (the "System"), refunding certain outstanding bonds of the City payable from the System, costs of authorizing and issuing this bond and interest during construction, and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated and pursuant to Ordinance No. \_\_\_\_\_ of the City, duly adopted and approved on the \_\_\_\_\_ day of April, 1992 (the "Authorizing Ordinance"). Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City and the registered owner of this bond.

This bond may be assigned with the written approval of the Arkansas Department of Pollution Control and Ecology (the "Department"), and in order to effect such assignment the assignor shall promptly notify the City Clerk by registered mail, and the assignee shall surrender this bond along with a written approval of the Department to the City Clerk for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the City Clerk), prior to such surrender for transfer.

This bond may be prepaid at the option of the City from funds from any source, in whole but not in part, at any time on and after May 1, 2002, at a prepayment price equal to the principal amount outstanding, plus accrued interest to the prepayment date. Notice shall be given of such prepayment to the owner of this bond or registered assigns at least 90 days prior to the prepayment date. Such notice shall be in writing mailed to the address of the owner of this bond or registered assigns at the address as reflected on the bond registration books of the City Clerk.

This bond does not constitute an indebtedness of the City within any constitutional or statutory limitation or provision, and the taxing power of the City is not pledged to the payment of the principal of or interest on this bond. This bond is

a special obligation payable solely from revenues derived from the operation of the System. In this regard, the pledge of System revenues is subordinate to the pledge of System revenues to an issue of Sewer Revenue Refunding Bonds, dated March 1, 1978, so long as any of such bonds are outstanding. A sufficient amount of System revenues to pay principal and interest has been duly set aside and pledged as a special fund for that purpose, identified as the "ADFA Bond Fund," created by the Authorizing Ordinance. The City has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all times to at least provide for the payment of the reasonable expenses of operation and maintenance of the System, provide for the payment of the principal of and interest on all the outstanding bonds to which System revenues are pledged as the same become due, to establish and maintain debt service reserves and to provide a depreciation fund, all as set forth in the Authorizing Ordinance.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State to exist, happen and be performed precedent to and in the issuance of this bond do exist, have happened and have been performed in regular and due time, form and manner as required by law; that this bond does not exceed any constitutional or statutory limitation of indebtedness, and that provision has been made for the payment of the principal of and interest on this bond, as provided in the Authorizing Ordinance.

IN WITNESS WHEREOF, the City of Conway, Arkansas has caused this bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, with the manual signatures of the Mayor and City Clerk, and its corporate seal to be affixed, all as of the 28<sup>th</sup> day of April, 1992.

CITY OF CONWAY, ARKANSAS

By

Mayor

ATTEST:

Martha Hartman  
City Clerk

(SEAL)

REGISTRATION CERTIFICATE

_____	:	_____	:	Signature of
Date of Registration	:	Name of Registered Owner	:	City Clerk
_____	:	_____	:	_____
_____	:	_____	:	_____
_____	:	_____	:	_____

RECORD OF PAYMENT OF ADVANCES

<u>Date of Advance*</u>	<u>Amount of Advance</u>	<u>Total Principal Outstanding</u>	<u>Signature of Vice President of Arkansas Development Finance Authority</u>
_____	_____	_____	_____
_____	_____	_____	_____

\*The date of each advance shall be the interest commencement date from which the principal amount of such advance bears interest.

Section 7. The City has heretofore fixed sewer rates by Ordinance No. \_\_\_ of the Issuer, adopted April 28, 1992. Reference is hereby made to such Ordinance fixing the rates for the details thereof and other provisions pertaining thereto, which sewer rates are hereby confirmed and continued.

The City covenants and agrees that the rates established will produce gross Revenues at least sufficient to pay monthly operation, maintenance and funded depreciation expenses of the System, pay the principal of and interest on all outstanding bonds to which Revenues are pledged, as the same become due, pay the Servicing Fees as the same become due, and create and maintain any required debt service reserves ("Required Payments"). The City covenants always to maintain rates (including increases as necessary) which will provide for the Required Payments.

Section 8. All of the provisions of the 1978 Ordinance (including those incorporated therein by reference), except those provisions clearly inapplicable hereto and in direct conflict herewith, including, without limitation, the provisions pertaining to the collection and the handling of Revenues and funds, to the operation, maintenance and care of the System, and to the depreciation of the System, are hereby made applicable hereto and are incorporated herein by reference as though fully set forth at this point. The effect of the above covenant shall be to continue the applicable provisions in full force and effect even after the payment of the 1978 Bonds and until the bond is paid, or provision made therefor.

Section 9. The City covenants that it will continuously operate the System as a revenue-producing undertaking and will not sell or lease the same, or any substantial portion thereof, without the prior written approval of the Bondholder and the Department; provided, however, that nothing herein shall be construed to prohibit the City from making such dispositions of properties of the System and such replacements and substitutions for properties

of the System as shall be necessary or incidental to the efficient operation of the System as a revenue-producing undertaking.

Section 10. (a) After making the required payments into the Sewer Operation and Maintenance Fund being maintained pursuant to the 1978 Ordinance, and after making the required payments into the bond funds for the 1978 Bonds and any additional bonds having a priority on the pledge of Revenues over the pledge in favor of the bond, there shall be paid from the Sewer Fund (the "Revenue Fund") being maintained pursuant to the 1978 Ordinance into an account of the City in a special fund to be created by the Bondholder (the "ADFA Bond Fund") for the purpose of paying the principal of and interest on the bond.

(b) In order to pay interest on the bond, there shall be paid from proceeds of the bond as provided in Section 16 hereof into the ADFA Bond Fund on each April 15 and October 15 after the bond is issued until April 15, 1995, the interest due on the bond on such dates. Commencing on the first business day of each month thereafter, there shall be deposited from moneys in the Revenue Fund into the ADFA Bond Fund an amount equal to 1/6 of the amount of interest on and principal of the bond next due.

(c) If Revenues are insufficient to make the required payment on or before the first business day of the following month into the ADFA 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 ADFA Bond Fund on the first business day of the next month.

(d) When the moneys held in the ADFA Bond Fund which represent payments by the City and interest earnings thereon or proceeds of investments therefrom (collectively, "City Funds") shall be and remain sufficient to pay in full the principal of and interest on the bond, the City shall not be obligated to make any further payments into the ADFA Bond Fund.

(e) All moneys in the ADFA Bond Fund representing City Funds shall be used solely for the purpose of paying the principal of and interest on the bond and the City shall automatically receive a credit for the amount of such City Funds on hand in the ADFA Bond Fund and available for the payment of any principal and interest currently due on an interest or principal payment date irrespective of whether the Bondholder has applied or caused to be applied such funds on that date for such purpose. The City shall receive a credit for all earnings and income derived from the investment of the City's Funds each April 15 and October 15, and such earnings and income shall be credited against the next six monthly payments.

(f) The bond shall be specifically secured by a pledge of all Revenues required to be placed into the ADFA Bond Fund. This pledge in favor of the bond 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 11. After making the payments into the ADFA Bond Fund required by Section 10 hereof, there shall be paid from the Revenue Fund the Servicing Fee to the Authority. The Servicing Fee shall be payable on each date interest on the bond is due and shall be calculated on the same basis as interest on the bond. The payment of the Servicing Fee is expressly made subordinate to the payment of the principal of and interest on the bond.

Section 12. The City shall assure that (1) not in excess of 10% of the proceeds of the bond is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the bond during the term thereof is, under the terms of the bond 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 5% of the proceeds of the bond are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the bond during the term thereof is, under the terms of the bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said 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 said Private Business Use, then said excess over said 5% of proceeds of the bond used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements.

The City shall assure that not in excess of 5% of the proceeds of the bond are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this Section 12, "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.

Section 13. The principal and interest installments shall be prepayable prior to maturity as provided in the bond form in Section 6 hereof.

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

The City may issue additional revenue bonds to finance or pay the cost of constructing extensions, betterments and improvements to the System or to refund outstanding bonds of the City payable from Revenues issued for such purposes having a priority on or on a parity with the lien on Revenues in favor of the bond if there shall have been procured and filed with the City Clerk and the Bondholder a statement by a certified public accountant not in the regular employ of the City reciting the opinion that (i) the Net Revenues (Net Revenues being gross Revenues less operation and maintenance expenses, but not including depreciation) for the fiscal year preceding the year in which such additional bonds are to be issued were not less than 110% of the average annual debt service requirements on all outstanding bonds to which Revenues are pledged and the bonds then proposed to be issued plus the average annual Servicing Fee or (ii) the Net Revenues for the fiscal year succeeding the year in which such additional bonds are to be issued are projected to be sufficient in amount, taking in consideration any enacted increase in Revenues, to be not less than 110 percent of the average annual debt service requirements (principal and interest) on all outstanding bonds to which Revenues are pledged and the bonds then proposed to be issued plus the average annual Servicing Fee.

The additional bonds, the issuance of which is restricted and conditioned by this Section 14, shall not be deemed to mean bonds the security and source of payment of which are subordinate and subject to the priority of the bond and such additional bonds may be issued without complying with the terms and conditions of this Section 14.

Section 15. It is covenanted and agreed by the City with the Bondholder, the Authority and the Department that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State and by this Ordinance, including, without limitation, the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, segregating Revenues and applying them to the respective funds maintained pursuant to the 1978 Ordinance and this Ordinance.

The City covenants and agrees that the Bondholder shall have the protection of all the provisions of the Authorizing Legislation, and that the City will diligently proceed to enforce those provisions to the end of the Bondholder realizing fully upon its security. And, if the City shall fail to proceed within 30

days after written request shall have been filed by the Bondholder, the Bondholder may proceed to enforce all such provisions.

If there be any default in the payment of the principal of or interest on the bond, or if the City defaults in any ADFA Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance, the Bondholder may, by proper suit, compel the performance of the duties of the officials of the City under the laws of the State. In the case of a default in the payment of the principal of and interest on the bond, the Bondholder may 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 Bondholder 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, repair and maintenance and to pay the bond and interest outstanding and to apply Revenues in conformity 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. No remedy herein conferred upon or reserved to the Bondholder is intended to be exclusive of any other remedy or remedies herein provided or provided by law, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law. No delay or omission of the Bondholder 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 default or an acquiescence therein; and every power and remedy given by this Ordinance to the Bondholder may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Any costs of enforcement of the bond or of any provision of this Ordinance, including reasonable attorney's fees, shall be paid by the City.

The Authority may enforce all rights and exercise all remedies available to the Bondholder in the event the Servicing Fee is not paid when due.

Section 16. When the bond has been executed by the Mayor and City Clerk and the seal of the City impressed as herein provided, it shall be delivered to the Bondholder upon payment of all or a portion of the purchase price in accordance with the Agreement.

Sale proceeds in the amount necessary to pay in full the 1991 Bond on the date the bond is issued shall be used to prepay the 1991 on that date.

There shall be deposited into the ADFA Bond Fund from sale proceeds on each interest payment date the amount necessary to pay interest on the bond through April 15, 1995. The balance of the sale proceeds shall be deposited, as and when received, in the Sewer Construction Fund established by the 1991 Ordinance. The moneys in the Sewer Construction Fund shall be used for accomplishing the Improvements, paying expenses incidental thereto and paying the expenses of issuing the bond approved in accordance with the Agreement. Payments from the Sewer Construction Fund shall be by check or voucher signed by the General Manager of the Corporation or his designee, and drawn on the depository. Each such check or voucher shall briefly specify the purpose of the expenditure.

When the Improvements have been completed and all required expenses paid and expenditures made from the Sewer Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof, this fact shall be evidenced by a certificate signed by the General Manager of the Corporation, which certificate shall state, among other things, the date of the completion and that all obligations payable from the Sewer Construction Fund have been discharged. A copy of the certificate shall be filed with the depository bank, the Bondholder and the Department.

Section 17. The terms of this Ordinance shall constitute a contract between the City, the Bondholder and the Department and no variation or change in the undertaking herein set forth shall be made while the bond is outstanding unless consented to in writing by the Bondholder and the Department.

Section 18. The City will keep proper records, books and accounts relating to the operation of the System, which shall be kept separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the operation of the System in accordance with generally accepted government accounting standards. Such books shall be available for inspection by the Bondholder and the Department, or the agent or the representative of either, at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an independent certified public accountant at least once each year. The City shall also furnish to the Bondholder and the Department (1) on or before thirty (30) days after the close of each fiscal year a statement of the operations of the System for the past fiscal year in form and content in the manner hereinafter specified, and (2) on or before ninety (90) days after the close of each fiscal year, a copy of the audit report of the certified public accountant. In the event the City fails or refuses to furnish or cause such reports to be furnished, the Bondholder may have the reports made, and the cost thereof shall be charged against the Sewer Operation and Maintenance Fund.

Section 19. The City covenants and agrees that it will maintain the System in good condition and operate it in an efficient manner and at reasonable cost. While the bond is outstanding, the City agrees that it will insure, and at all times keep insured, in the amount of the actual value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State to assume the risk thereof, all above-ground structures of the System (except reservoirs, sandpipes and elevated tanks) against loss or damage thereto from fire, lightning, tornado, winds, riot, strike, civil commotion, malicious damage, explosion, and against loss or damage from any other causes customarily insured against by private companies engaged in a similar type of business. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Revenue Fund, and if such proceeds shall be insufficient for such purposes, the deficiency shall be supplied, first, from moneys in the Sewer Depreciation Fund maintained pursuant to the 1978 Ordinance, second, from moneys in the Sewer Operation and Maintenance Fund, and third, from available moneys in the Revenue Fund. Nothing herein shall be construed as requiring the City to expend any funds for reconstruction, replacement or repair of the System or for operation and maintenance of the System or for premiums on its insurance which are derived from sources other than insurance proceeds or Revenues, but nothing herein shall be construed as preventing the City from doing so.

Section 20. So long as the Corporation operates the System for the City, performance by the Corporation of any right or obligation of the City hereunder shall be deemed performance by the City. Throughout this Ordinance, references to the City shall, if appropriate, be deemed to specifically include the Corporation.

Section 21. The City agrees that the Bondholder may pledge the bond as security for the ADFA Bonds, and the ADFA Trustee and/or the municipal bond insurer for the ADFA Bonds may exercise any rights and remedies available to the Bondholder under this Ordinance or the Agreement while the bond is pledged and/or insured. In addition, the City agrees that while the bond is pledged and/or insured, copies of all financial information shall be furnished to the ADFA Trustee and/or the municipal bond insurer.

Section 22. All moneys in the 1991 Sewer Revenue Bond Fund created by the 1991 Ordinance shall be transferred to the Revenue Fund and such Bond Fund shall be terminated.

Section 23. The provisions of this Ordinance are hereby declared to be separable, and if any provision shall for any reason

be held illegal or invalid, it shall not affect the validity of the remainder of this Ordinance.

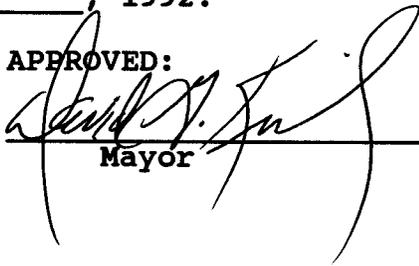
Section 24. Reference in this Ordinance to "Bondholder" shall include the original Bondholder or any registered assign thereof.

Section 25. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 26. It is hereby ascertained and declared that the System is inadequate to serve the needs of the City and the inhabitants thereof, thus endangering the life, health and safety of the inhabitants and their property, and that the only practical manner in which those hazards can be eliminated is by the construction to be financed by the bond. 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: April 28<sup>th</sup>, 1992.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)