

ORDINANCE NO. 0-92-3

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWER FACILITIES OF THE CITY OF ARKADELPHIA, ARKANSAS; AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE BONDS FOR THE PURPOSE OF FINANCING THE COST OF CONSTRUCTION; 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 Arkadelphia, Arkansas (the "City") owns and operates water and sewer facilities, which water and sewer facilities are operated as a single municipal undertaking (the "System"), and has determined that extensions, betterments and improvements to the wastewater treatment facilities of 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 had prepared an engineering report for the Improvements, has obtained preliminary estimates of cost totalling \$3,000,000 for the Improvements and is prepared to proceed with the construction of the Improvements; and

WHEREAS, the City is making arrangements for the sale of a \$3,000,000 principal amount bond to the Arkansas Development Finance Authority ("ADFA" or the "Department") at a price of par for a bond bearing interest at the rate of 2.50% per annum pursuant to a Bond Purchase Agreement (the "Agreement") among the City, the ADFA and the Arkansas Department of Pollution Control and Ecology (the "Department"), which has been presented to and is before this meeting; and

WHEREAS, ADFA and any subsequent holder of the bond authorized hereby are referred to herein as the "Bondholder;" and

WHEREAS, the City has outstanding an issue of Water and Sewer Refunding Revenue Bonds, dated November 1, 1976 (the "1976 Bonds"), authorized by Ordinance No. 331, passed and approved October 21, 1976 (the "1976 Ordinance"); and

WHEREAS, the City has outstanding an issue of Water and Sewer Revenue Bonds, Series 1986, dated August 1, 1986 (the "1986 Bonds") authorized by Ordinance No. 457, passed and approved July 17, 1986, as amended by Ordinance No. 458, passed and approved August 28, 1986 (the "1986 Ordinance"); and

WHEREAS, the City is authorized, under the provisions of Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Code") and Title 14, Chapter 235, Subchapter 2 of

the Code (collectively, 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 its Wastewater Revenue Bonds, 1992 Series (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 ADFA a servicing fee (the "Servicing Fee") equal to 1% per annum on the outstanding principal amount of the bond;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Arkadelphia, Arkansas:

Section 1. That the Improvements be accomplished. The Mayor and City Clerk are hereby authorized to take, or cause to be taken, all action necessary to accomplish the Improvements and to execute all required contracts.

Section 2. That the sale to the Bondholder of up to \$3,000,000 in principal amount of a bond from the City at a price of par for a bond bearing interest at the rate of 2.50% 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 City Manager 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 at the meeting at which this Ordinance is adopted, with such changes as may be approved by the City Manager, his execution to constitute complete evidence of such approval.

Section 3. That the Board of Directors 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. That under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly the Authorizing Legislation, and applicable decisions of the Supreme Court of the State, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), City of Arkadelphia, Arkansas Water and Sewer Revenue Bond, Series 1992 (the "bond") is hereby authorized and ordered issued in the principal amount of \$3,000,000, the proceeds of the sale of which are necessary to provide sufficient funds for accomplishing the Improvements, paying expenses incidental thereto and paying

expenses of issuing the bond approved in accordance with the Agreement.

The bond shall bear interest at the rate of 2.50% 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 issuance of the bond to and including April 15, 1995. Thereafter, principal and interest shall be payable in installments on each April 15 and October 15 until the unpaid principal is paid in full except that the final payment shall be due not later than April 15, 2015.

Principal, interest and Servicing Fee with respect to the bond shall be payable, semiannually, as follows:

| <u>Payment Date</u> | <u>Payment Total</u> | <u>Interest</u> | <u>Servicing Fee</u> | <u>Principal</u> |
|---------------------|----------------------|-----------------|----------------------|------------------|
| 10/15/95 | \$104,916.27 | \$37,500.00 | \$15,000.00 | \$ 52,416.27 |
| 04/15/96 | 104,916.27 | 36,844.80 | 14,737.92 | 53,333.56 |
| 10/15/96 | 104,916.27 | 36,178.13 | 14,471.25 | 54,266.90 |
| 04/15/97 | 104,916.27 | 35,499.79 | 14,199.92 | 55,216.57 |
| 10/15/97 | 104,916.27 | 34,809.58 | 13,923.83 | 56,182.86 |
| 04/15/98 | 104,916.27 | 34,107.30 | 13,642.92 | 57,166.06 |
| 10/15/98 | 104,916.27 | 33,392.72 | 13,357.09 | 58,166.46 |
| 04/15/99 | 104,916.27 | 32,665.64 | 13,066.26 | 59,184.37 |
| 10/15/99 | 104,916.27 | 31,925.84 | 12,770.33 | 60,220.10 |
| 04/15/00 | 104,916.27 | 31,173.09 | 12,469.23 | 61,273.95 |
| 10/15/00 | 104,916.27 | 30,407.16 | 12,162.86 | 62,346.25 |
| 04/15/01 | 104,916.27 | 29,627.83 | 11,851.13 | 63,437.31 |
| 10/15/01 | 104,916.27 | 28,834.87 | 11,533.95 | 64,547.46 |
| 04/15/02 | 104,916.27 | 28,028.02 | 11,211.21 | 65,677.04 |
| 10/15/02 | 104,916.27 | 27,207.06 | 10,882.82 | 66,826.39 |
| 04/15/03 | 104,916.27 | 26,371.73 | 10,548.69 | 67,995.85 |
| 10/15/03 | 104,916.27 | 25,521.78 | 10,208.71 | 69,185.78 |
| 04/15/04 | 104,916.27 | 24,656.96 | 9,862.78 | 70,396.53 |
| 10/15/04 | 104,916.27 | 23,777.00 | 9,510.80 | 71,628.47 |
| 04/15/05 | 104,916.27 | 22,881.65 | 9,152.66 | 72,881.97 |
| 10/15/05 | 104,916.27 | 21,970.62 | 8,788.25 | 74,157.40 |
| 04/15/06 | 104,916.27 | 21,043.66 | 8,417.46 | 75,455.15 |
| 10/15/06 | 104,916.27 | 20,100.47 | 8,040.19 | 76,775.62 |
| 04/15/07 | 104,916.27 | 19,140.77 | 7,656.31 | 78,119.19 |
| 10/15/07 | 104,916.27 | 18,164.28 | 7,265.71 | 79,486.28 |
| 04/15/08 | 104,916.27 | 17,170.70 | 6,868.28 | 80,877.29 |
| 10/15/08 | 104,916.27 | 16,159.74 | 6,463.89 | 82,292.64 |
| 04/15/09 | 104,916.27 | 15,131.08 | 6,052.43 | 83,732.76 |
| 10/15/09 | 104,916.27 | 14,084.42 | 5,633.77 | 85,198.09 |
| 04/15/10 | 104,916.27 | 13,019.44 | 5,207.78 | 86,689.05 |
| 10/15/10 | 104,916.27 | 11,935.83 | 4,774.33 | 88,206.11 |
| 04/15/11 | 104,916.27 | 10,833.25 | 4,333.30 | 89,749.72 |
| 10/15/11 | 104,916.27 | 9,711.38 | 3,884.55 | 91,320.34 |
| 04/15/12 | 104,916.27 | 8,569.88 | 3,427.95 | 92,918.44 |
| 10/15/12 | 104,916.27 | 7,408.40 | 2,963.36 | 94,544.52 |
| 04/15/13 | 104,916.27 | 6,226.59 | 2,490.64 | 96,199.05 |
| 10/15/13 | 104,916.27 | 5,024.10 | 2,009.64 | 97,882.53 |
| 04/15/14 | 104,916.27 | 3,800.57 | 1,520.23 | 99,595.47 |
| 10/15/14 | 104,916.27 | 2,555.63 | 1,022.25 | 101,338.39 |
| 04/15/15 | 104,916.27 | 1,288.90 | 515.56 | 103,111.82 |

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 bond has been fully paid, it shall be canceled and delivered to the City Clerk.

Section 5. That 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 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 1976 Bonds and the 1986 Bonds (collectively, the "Prior Bonds"). The bond and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 6. (a) That 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 CLARK
CITY OF ARKADELPHIA
2.50% WATER AND SEWER REVENUE BOND, SERIES 1992

No. R-1

\$3,000,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Arkadelphia, Clark 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

THREE MILLION 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 2.50% 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 each April 15 and October 15 after issuance of this bond to and including April 15, 1995. Thereafter, principal and interest shall be payable in installments on each April 15 and October 15 until the unpaid principal is paid in full except that the final payment shall be due not later than April 15, 2015. Principal installments shall be due and payable as follows:

| <u>Date</u> | <u>Principal Due</u> |
|-------------|----------------------|
|-------------|----------------------|

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 facilities of the City (the "construction"), which facilities are operated with the City's water facilities as a single municipal undertaking (the "System"), and costs of authorizing and issuing this bond, 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 234, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Code") and Title 14, Chapter 235, Subchapter 2 of the Code, and applicable decisions of the Supreme Court of the State, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W. 2d 12 (1946), and pursuant to Ordinance No. 0-92-3 of the City, duly adopted and approved on the 20th day of February, 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, 2001, 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 Water and Sewer Refunding Revenue Bonds, dated November 1, 1976, and Water and Sewer Revenue Bonds, Series 1986, dated August 1, 1986, 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 for that purpose in a fund identified as the "ADFA Bond Fund. 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 to 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, establish and maintain debt service reserves and 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 Arkadelphia, 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 20th day of February, 1992.

CITY OF ARKADELPHIA, ARKANSAS

By Kathy Holland
Mayor

ATTEST:

Shirley A. Loy
City Clerk

(SEAL)

REGISTRATION CERTIFICATE

| | | |
|-----------------------------|---------------------------------|---------------------|
| <u>Date of Registration</u> | <u>Name of Registered Owner</u> | <u>Signature of</u> |
| | | <u>City Clerk</u> |
| | | |
| | | |
| | | |

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. That the City has heretofore fixed water rates by Ordinance No. B-362, adopted on July 12th, 1979, and sewer rates by Ordinance No. 0-92-3 adopted on February 20th, 1992. Reference is hereby made to such Ordinances fixing the rates for the details thereof and other provisions pertaining thereto, which water and sewer rates are hereby confirmed and continued.

The City covenants 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, 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. That all of the provisions of the 1976 Ordinance and the 1986 Ordinance (collectively, the "Prior Ordinances") (including those incorporated therein by reference), as now in effect, and except those provisions clearly inapplicable hereto, 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 Prior Bonds and until the bond is paid, or provision made therefor.

Section 9. That 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) That after making the required payments into the Operation and Maintenance Fund being maintained pursuant to the Prior Ordinances, and after making the required payments into the bond funds for the Prior 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 Water and Sewer Fund (the "Revenue Fund") being maintained pursuant to the Prior Ordinances into an account of the City in a special fund created by

and in the name of 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 deposited into the ADFA Bond Fund from Bond proceeds in accordance with Section 16 hereof upon issuance of the bond the sum described therein and on October 15, 1992 and on each April 15 and October 15 thereafter until and including April 15, 1994, the interest due on the bond on such date. Commencing on the first business day of each month thereafter, there shall be deposited into the ADFA Bond Fund an amount equal to 1/6 of the amount of interest or principal and interest then next due on the bond.

(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. That if, in order fully to pay or prepay the bond, moneys or direct, non-callable obligations of the United States of America shall have been deposited in escrow with a bank

or trust company having a reported capital and surplus in excess of \$15,000,000, as escrow agent for the benefit of the Bondholder (the "Agent"), which moneys or obligations shall provide, without reinvestment, for moneys in amounts and at times sufficient to pay interest and principal (at maturity or upon redemption) as due, the bond shall be deemed to be paid and discharged; provided, however, that if the bond is to be prepaid prior to maturity, notice of such prepayment shall have been duly given or the Agent shall have been irrevocably instructed in writing to give such notice of prepayment in a timely fashion. Such obligations deposited with the Agent shall mature as to principal and interest in such amounts and at such times as will provide sufficient moneys to pay the principal of and interest on when due at maturity or at redemption prior to maturity.

Section 12. That the City shall assure that (1) not in excess of ten percent (10%) of the proceeds of the bond 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 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 five percent (5%) of the proceeds of the bond 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 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 money used or to be used for a Private Business Use, the excess over such five percent (5%) of proceeds of the bonds 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 five percent (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. That the principal and interest installments shall be prepayable prior to maturity as provided in the bond form in Section 6 hereof.

Section 14. That 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 over 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 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 into 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.

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 subordinate bonds may be issued without complying with the terms and conditions of this Section 14.

Section 15. That it is covenanted by the City with the Bondholder 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 Prior Ordinances and this Ordinance.

The City covenants 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 thirty (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 any of the bond, or if the City defaults in any 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.

Section 16. That, 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 make the semiannual interest payments due on the bond on October 15, 1992, and each April 15 and October 15 thereafter to and including April 15, 1994, shall be applied to the payment of interest on the bond on such dates.

The balance of the sale proceeds shall be deposited, as and when received, in a special account of the City hereby created in a bank selected by the City that is a member of FDIC and designated the "1992 Sewer Construction Fund" (the "Construction Fund"). The moneys in the 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 Construction Fund shall be by check or voucher signed by the City Treasurer and the Mayor 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 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 Mayor and by the consulting engineer, which certificate shall state, among other things, the date of the completion and that all obligations payable from the Construction Fund have been discharged. A copy of the certificate shall be filed with the depository bank, the Bondholder and the Department.

Section 17. That 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. That 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. The first report required by the last preceding sentence shall contain at least the following information:

- (a) Statement of income and expense for the System;
- (b) Balance sheet for the System;
- (c) Schedule of insurance policies and fidelity bonds showing, with respect to each policy and bond, the amount and nature of risk covered, the expiration date, the name of the insurer; and
- (d) Schedule of the number of customers (connected and unconnected to the System) and showing the rate schedule currently in effect.

The reports referred to above shall cover the operations of the System for all of the last ensuing fiscal year. 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 Operation and Maintenance Fund.

Section 19. That the City covenants 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 Depreciation Fund maintained pursuant to the Prior Ordinances, second, from moneys in the 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. That there shall be a statutory mortgage lien upon the water facilities of the System (including all extensions, improvements and betterments now or hereafter existing) which shall exist in favor of the Bondholder and the System shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of the bond.

Section 21. That 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. That the post adoption hearing on this Ordinance required by Arkansas Code of 1987 Annotated §14-234-206 shall be held at the time determined by the Mayor. The Mayor shall give the required notice of hearing.

Section 23. That this Ordinance shall not create any right of any kind, and no right of any kind shall arise hereunder pursuant to it, until the bond shall be issued and delivered.

Section 24. That 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 25. That reference in this Ordinance to "Bondholder" shall include the original Bondholder or any registered assign thereof.

Section 26. That all ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 27. That 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: February 20th, 1992.

APPROVED:

Kitty Halland
Mayor

ATTEST:

Shirley A. Loy
City Clerk

(SEAL)

CERTIFICATE

The undersigned, City Clerk _____ of the City of Arkadelphia, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 0-92-3, adopted at a regular session of the Board of Directors of the City, held at the regular meeting place in the City at 7:00 o'clock p.m., on the 20th day of February, 1992, and that the Ordinance is of record in Ordinance Record Book No. 1974, Page 291, now in my possession.

GIVEN under my hand and seal on this 20th day of February, 1992.

Shirley A. Loy
City Clerk

(SEAL)