

ORDINANCE NO. 091-21

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 PLANNING AND DESIGN PHASE 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 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 is prepared to proceed with the planning and design phase of the Improvements with an estimated cost of \$662,500; and

WHEREAS, the City is making arrangements for the sale of a \$662,500 principal amount bond to the Arkansas Development Finance Authority (the "Bondholder") at a price of par for a bond bearing interest at the rate of 4% 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 bond authorized hereby is being issued in anticipation of the issuance of permanent and definitive bonds to finance the Improvements; and

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

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

Section 1. That the planning and design phase of, the Improvements be accomplished under the control and supervision of, and all details in connection therewith shall be handled by, the Corporation.

Section 2. That the sale to the Bondholder of up to \$662,500 in principal amount of a bond from the City at a price of par for a bond bearing interest at the rate of 4% 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. That 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 (20) years.

Section 4. That 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 (the "bond") is hereby authorized and ordered issued in the principal amount of \$662,500, the proceeds of the sale of which are necessary to provide sufficient funds for accomplishing the planning and design phase of the Improvements, paying expenses incidental thereto and paying expenses of issuing the bond approved in accordance with the Agreement, The bond is being issued to provide temporary financing in anticipation of the delivery of permanent and definitive bonds for the Improvements. Upon delivery of the permanent and definitive bonds, the bond, to the extent then outstanding, with accrued interest, shall be exchanged for, or paid from the proceeds of, the permanent and definitive bonds and shall be cancelled.

The bond shall bear interest at the rate of 4% per annum based upon a 360 day year of twelve consecutive 30 day months. Principal of the bond shall be payable on a date five years from the dated date of the bond (the "Dated Date"). The bond shall be dated the date of delivery to the Bondholder. Interest on the bond shall be payable one (1) year from the Dated Date and semiannually thereafter until the bond is paid in full,

The bond will be issued in the form of a single typewritten bond, 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 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. Payment of principal shall be made upon presentation and surrender of the bond to the City Clerk. 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") and from the proceeds of the permanent and definitive bonds. The pledge of Revenues is subordinate to the pledge in favor of 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:

Section 7. That the City has heretofore fixed sewer rates by Ordinance No. 0-86-56, adopted on October 14, 1986. Reference is hereby made to such Ordinance fixing sewer 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 replacement expenses of the System, pay the principal of and interest on all outstanding bonds to which Revenues are pledged ("System Bonds"), as the same become due, and create and maintain any required debt service reserves. The City covenants always to maintain rates (including increases as necessary) which will provide for the maintenance of the funds hereinafter described. The rates shall never be reduced while the bond is outstanding unless there is obtained from a certified public accountant not in the regular employ of the City a certificate reciting the opinion that the proposed new rates will produce sufficient Net Revenues (Net Revenues for this Section being gross Revenues to be derived during the next twelve (12) months less the reasonably anticipated cost of operation and maintenance for the next twelve (12) months and less the required deposits for depreciation of the System for the next twelve (12) months) equal to not less than 120% of the maximum amount that will become due in any year thereafter for principal and interest on all System Bonds then outstanding.

Section 8. That all of the provisions of the Prior Ordinance (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.

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 Sewer Operation and Maintenance Fund being maintained pursuant to the Prior Ordinance (the "Operation and Maintenance Fund"), and after making the required payments into the bond fund created and being maintained pursuant to the Prior Ordinance, there shall be paid from the Sewer Fund (the "Revenue Fund") being maintained pursuant to the Prior Ordinance into a special fund in the name of the City which is hereby created in a bank selected by the Corporation which is a member of the Federal Deposit Insurance Corporation ("FDIC") and designated "1991 Sewer Revenue Bond Fund" (the "Bond Fund"), the sums in the amounts and at the times hereinafter stated in subsection (b) for the purpose of providing funds for the payment of the principal of and interest on the bond as it matures.

(b) There shall be paid into the Bond Fund one year from the Dated Date an amount equal to the interest due on that date. There shall be paid into the Bond Fund on the first business day of each month thereafter until the bond with interest thereon have been paid in full or provision made for such payment, an amount equal to 1/6 of the next installment of interest on the bond. At least five days prior to the maturity date of the bond, there shall also be paid into the Bond Fund an amount equal to the principal of the bond then outstanding.

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

(d) When the moneys held in the Bond Fund shall be and remain sufficient to pay the principal of and interest on the bond, the City Treasurer shall not be obligated to make any further payments into the Bond Fund.

(e) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bond, except as herein specifically provided. If a surplus shall exist in the Bond Fund over and above the amount necessary to insure the payment, when due, of principal and interest, such surplus shall, at the option of the City, either (1) be used for the redemption of the bond, (2) be used for the construction of improvements and extensions to the System or (3) be transferred to the Revenue Fund.

(f) It shall be the duty of the City Treasurer to withdraw from the Bond Fund and to pay to the Bondholder or registered assigns, on or before the date on which each installment

hereunder is due, an amount equal to the amount of such installment.

(g) The bond shall be specifically secured by a pledge of all Revenues required to be placed into the 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 payments from the Bond Fund shall be made by check or voucher, signed by the City Treasurer or the General Manager of the Corporation (the "General Manager") or his designee, and drawn on the depository.

Section 12. 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.

Nothing herein shall be construed in any manner to prevent the issuance by the City of additional revenue bonds to finance or pay the cost of constructing extensions, betterments and improvements to the System; however, any such additional bonds shall not be issued on a parity with the bond unless and until there shall have been procured and filed in the office of the City Clerk a statement by a certified public accountant not in the regular employ of the City reciting the opinion that the Net Revenues (Net Revenues for this Section being gross Revenues of the System less operation and maintenance expenses) of the System for the fiscal year preceding the year in which such parity bonds are to be issued were not less than 120% of the average annual debt service requirements on all outstanding System Bonds and the bonds then proposed to be issued.

The additional bonds, the issuance of which is restricted and conditioned by this Section 12, 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.

Section 13. That it is covenanted and agreed 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 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 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 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 any System Bonds 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 14. 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.

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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 Corporation that is a member of FDIC and designated the "Sewer Construction Fund" (the "Construction Fund"). The moneys in the Construction Fund shall be used for accomplishing the planning and design phase of the Improvements, paying expenses incidental thereto and paying the expenses of issuing the bond approved in accordance with the Agreement. Disbursements shall be made on the basis of checks or vouchers signed by the General Manager or his designee. Each check shall reflect the purpose by general classification of the payment.

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 General Manager, 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, and upon receipt thereof the depository bank shall transfer any remaining balance to the Bond Fund.

Section 15. (a) Moneys held for the credit of the Construction Fund and the Bond Fund may be invested and reinvested pursuant to the direction of the City in direct or fully guaranteed obligations of the United States of America ("Government Securities"), in time deposits or certificates of deposit of banks which are members of FDIC, or other investments as may, from time to time, be permitted by law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(b) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund.

(c) Moneys so invested in Government Securities or in certificates of deposit of banks to the extent insured by FDIC need not be secured by the depository bank. Otherwise, the depository shall be required to provide security as provided by law.

Section 16. 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 17. 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 Operation and Maintenance Fund.

Section 18. 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 any bonds are 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 of Arkansas to assume the risk thereof, all above-ground structures of the System 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 Prior Ordinance, 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 derived from the operation of the System, but nothing herein shall be construed as preventing the City from doing so.

Section 19. That 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 20. 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 21. 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 the Ordinance.

Section 22. That reference in this Ordinance to "Bondholder" shall include the original Bondholder or any registered assign thereof.

Section 23. That all ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 24. 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: April 9th, 1991.

APPROVED:

Richard J. Jenley
Mayor

ATTEST:

Matthew Spitzer
City Clerk

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Conway, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No 091-21 adopted at a regular session of the City Council of the City, held at the regular meeting place in the City at 6:30 o'clock p.m., on the 9th day of April, 1991, and that the Ordinance is of record in Ordinance Record Book No. 11, Page _____ now in my possession.

GIVEN under my hand and seal on this 10th day of April, 1991.

Martin Hartwick
City Clerk

(SEAL)