

ORDINANCE NO. 02-97

AN ORDINANCE AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWER SYSTEM OF THE CITY OF AUSTIN, ARKANSAS; AUTHORIZING THE ISSUANCE AND SALE OF SEWER REVENUE BONDS FOR THE PURPOSE OF FINANCING THE COSTS OF THE IMPROVEMENTS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; APPROPRIATING FUNDS FOR A DEBT SERVICE RESERVE; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Austin, Arkansas (the "City") wishes to construct extensions, betterments and improvements (the "Improvements") to the existing Sewer System of the City (the "System");

WHEREAS, the City is an incorporated city of the second class; and

WHEREAS, there is an immediate need for the Improvements to provide sewer service to preserve the health, safety and welfare of the City and its inhabitants, which improvements consist generally of installation of a duplex pumping station, sewer pipe, service line and bedding, and associated site work; and

WHEREAS, the City Council has had prepared by a duly qualified consulting engineer a Preliminary Engineer Report and estimates of costs of the Improvements, which have been examined and approved by the City Council and a copy filed in the office of the City Recorder/Treasurer where it may be inspected by any interested person; and

WHEREAS, it will be necessary to issue revenue bonds to finance the costs of acquiring, constructing and equipping the Improvements, including necessary expenses incidental thereto and to the financing thereof; and

WHEREAS, the total estimated costs of the Improvements and authorizing and issuing bonds is Four Hundred Thirty-Nine Thousand, Seven Hundred Dollars (\$439,700); and

WHEREAS, the City can obtain the necessary funds for the Improvements and the System through the issuance of Sewer Revenue Bonds in the principal amount of One Hundred Seventeen Thousand, Six Hundred Dollars (\$117,600), and the remaining balance through a grant from the U.S. Department of Agriculture, Rural Economic and Community Development Service ("RECDS"); and

WHEREAS, RECDS has agreed to purchase the Bonds (as hereinafter defined) at a price of 100% of par (the "Agreement"), and the Agreement provides that the Bonds will bear interest at a rate not to exceed the prevailing RECDS interest rate at the time of loan approval, which rate is four and one-half percent (4.5%) per annum, however, the Agreement provides further than, upon timely written request by the City, the interest rate on the Bonds will be the lower of (1) the prevailing RECDS interest rate at the time of loan approval, or (2) the prevailing RECDS interest rate at the time the Bonds are issued; and

WHEREAS the Bonds will be secured by a pledge of revenues of the System; and

WHEREAS, the City is authorized by Act 132 of the Acts of Arkansas of 1933, as amended (the "Act"), to operate the System and to acquire, construct and equip the Improvements and to incur costs and expenses and make expenditures incidental thereto;

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

Section 1. The Improvements shall be accomplished. Acquiring, constructing and equipping the Improvements as more specifically described in the Preliminary Engineer Report prepared by Miller-Newell Engineers, Inc. (the "Project Engineer"), are hereby approved, authorized and directed. The Mayor and City Recorder/Treasurer are hereby authorized to take, or cause to be taken, all action necessary to accomplish the construction and equipping of the Improvements and the System and to execute all required contracts and documents. The Mayor is further authorized and directed to make timely written request to RECDS that the Bonds bear interest at the lower of (1) the prevailing RECDS interest rate at the time of loan approval, or (2) the prevailing RECDS interest rate at the time the Bonds are issued.

Section 2. The City Council hereby finds and declares that the period of usefulness of the System will be more than forty (40) years, which is longer than the term of the Bonds.

Section 3. (a) Under the authority of the laws of the State of Arkansas, including particularly the Act, the City of Austin, Arkansas, Sewer Revenue Bonds, Series 1997, in the principal amount of One Hundred Seventeen Thousand, Six Hundred Dollars (\$117,600) (the "Bonds") are hereby authorized and ordered issued, the proceeds of the sale of which are necessary to finance the cost to the City of accomplishing the Improvements, paying necessary expenses incidental thereto, and paying the expenses of issuing the Bonds.

(b) Interest only on the Bonds shall be payable twelve (12) months following the Dated Date (as hereinafter defined) of the Bonds. Thereafter, commencing on the thirteenth (13th) month following the Dated Date, principal and interest shall be paid each month until paid in full, except that the final payment, if not paid sooner, shall be due and payable forty (40) years from the Dated Date, subject to prepayment prior to maturity as provided on the face of the Bonds. If the interest rate on the Bonds is four and one-half percent (4.5%) per annum, the amortized monthly payments shall be

in the amount of Five Hundred Thirty-Four Dollars (\$534) each. If the interest rate is lower, the monthly payments shall be in the amount necessary to amortize the Bonds in Four Hundred and Sixty-Eight (468) equal monthly installments. Each monthly payment shall be applied first to payment of interest then due and the balance shall be applied to a reduction of principal. The installments of principal and interest shall continue until the principal of the Bonds, with interest, is fully paid.

(c) The Bonds shall be issuable only as a single type-written bond, fully registered, without a coupon, in the denomination of One Hundred Seventeen Thousand, Six Hundred Dollars (\$117,600) payable to the registered owner, or assigns, as set forth hereinafter in the Form of Bond. Unless the City shall otherwise direct, the Bond shall be numbered "R-1" and shall not have a CUSIP number. (Even though a single bond will be issued, reference herein will be to the "Bonds".)

(d) The City hereby designates the City Recorder/Treasurer, as trustee (the "Trustee") for the owner of the Bonds. The Trustee shall also act as the paying agent (the "Paying Agent") for the Bonds.

(e) The Bonds shall be dated on the date of issuance (the "Dated Date"). All payments shall be made to the person in whose name the Bonds are registered on the registration books of the City maintained by the Trustee, as bond registrar, at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each payment date (the "Record Date"), irrespective of any transfer or exchange of any such Bond subsequent to such Record Date, and prior to such payment date, by check or draft mailed by the Trustee to such owner at his address on such registration books.

(f) In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the City shall cause to be executed and the Trustee may authenticate and deliver a new Bond of like date, maturity and tenure in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the owner's paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a Bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that the Bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. Upon the issuance of a new Bond under this Section, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the expenses of the Trustee) connected therewith.

(g) The City shall cause to be maintained books for the registration and for the transfer of the Bonds as provided herein and in the Bonds. The Trustee shall act as the bond registrar. Each Bond is transferable by the registered owner thereof as such owner's name appears on the registration books or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer, a new fully registered Bond or Bonds of the same maturity and for the same principal amount will be issued to the transferee in exchange therefor.

(h) The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of any Bond shall be made only to or upon the order of the Registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. Neither the City nor the Trustee shall be affected by any notice to the contrary.

(i) The Bonds shall be executed on behalf of the City by the manual signatures of the Mayor and the City Recorder/Treasurer and shall have impressed thereon the seal of the City.

Section 4. The sale of the Bonds to the RECDS for the purchase price of 100% of par is hereby authorized subject to the interest rates, maturity and other terms and provisions set forth in detail in this Ordinance and the Agreement, in substantially the form submitted to this meeting, is hereby approved and confirmed, and 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.

Section 5. The Bonds shall be in substantially the following form and the Mayor and City Recorder/Treasurer are hereby expressly authorized and directed to make all recitals on behalf of the City contained therein:

(Form of Single Registered Bond)
(To Be Typewritten)

REGISTERED

REGISTERED

No. R-1

\$117,600

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF LONOKE, CITY OF AUSTIN
SEWER REVENUE BOND
SERIES 1997

Dated Date: _____

Interest Rate: _____ %

Registered Owner: _____

Principal Amount: One Hundred Seventeen Thousand Six Hundred Dollars (\$117,600)

KNOW ALL MEN BY THESE PRESENTS:

The City of Austin, County of Lonoke, State of Arkansas (the "City"), for value received, hereby promises to pay, by check or draft, to the Registered Owner shown above, or registered assigns, the Principal Amount shown above, or the total principal amount outstanding as reflected by the Record of Payment Advances attached hereto, 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 public and private debts, and to pay by check or draft to the Registered Owner hereof interest on the unpaid balance of the total principal amount from the date of each advance, in like coin or currency at the Interest Rate per annum shown above. All payments of principal and interest shall be payable solely from the special fund provided therefor, as hereinafter set forth. Interest only on the Bonds shall be payable twelve (12) months following the Dated Date of the Bonds. Thereafter, commencing on the thirteenth (13th) month following the Dated Date, principal and interest shall be paid each month in the amortized monthly amount of Five Hundred Thirty-Four Dollars (\$534) until paid in full, except that the final payment, if not paid sooner, shall be due and payable forty (40) years from the Dated Date. Payments of 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 registration books of the City maintained by the City Recorder/Treasurer as Trustee and bond registrar, at the close of business on the fifteenth (15th) day of the month (whether or not a business day) next preceding each payment date (the "Record Date"), irrespective of any transfer or exchange of any such Bond subsequent to the Record Date, and prior to such payment date. Said payments shall fully discharge the obligation of the City to the extent of the payments so made.

This Bond is issued by the City of Austin, Arkansas as Sewer Revenue Bond, Series 1997, in the aggregate principal amount of One Hundred Seventeen Thousand Six Hundred Dollars

(\$117,600) (the "Bonds"), and is issued for the purpose of financing and paying the costs of the construction and equipping by the City of extensions, betterments and improvements (the "Improvements") to the existing sewer system (the "System"), and paying necessary expenses incidental thereto and to the issuance of the Bonds.

The Bonds are designated qualified tax-exempt obligations pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and are issued pursuant to and in full compliance with provisions of the Constitution and laws of the State of Arkansas, including particularly Act 132 of the Acts of Arkansas of 1933, as amended, and pursuant to Ordinance 02-97 adopted and approved on June 5, 1997 (the "Authorizing Ordinance"), and do 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 principal of or interest on the Bonds.

The Bonds are not general obligations of the City, but are special obligations of the City payable solely from receipts received from the operation of the System (the "Revenues"). The Bonds are secured by a pledge by the City of the Revenues pursuant to the provisions of Act 132 of the Acts of Arkansas of 1933, as amended, in favor of the Registered Owner of the Bonds. An amount of Revenues sufficient to pay the principal of and interest on the Bonds has been duly pledged and set aside as a special fund for that purpose, and will be deposited from time to time into the special fund which has been designated the City of Austin, 1997 Sewer Revenue Bond Fund (the "Bond Fund") created pursuant to the Authorizing Ordinance, under which the Bonds are authorized to be issued. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which the Bonds are issued, of the nature and extent of the security for the Bonds, and the rights and obligations of the City, the Trustee, the Paying Agent and the bondholder.

Prepayments of principal installments, or any portion thereof, may be made from funds from any source at any time at the option of the City in inverse chronological order of maturity at a price of the principal amount thereof plus accrued interest. Such prepayments shall not affect the obligation of the City to pay the remaining installments as scheduled herein.

The City has fixed, and has covenanted and agreed to maintain, rates for the services of the System that shall be sufficient at all times to provide for the proper and reasonable expenses of operation and maintenance of the System and for the payment of the principal of and interest on the Bonds to which System Revenues are pledged as the same become due and payable; to establish and maintain a debt service reserve; and to provide an operation and maintenance fund, all as set forth in the Authorizing Ordinance.

This Bond is transferable by the Registered Owner hereof in person or by his attorney-in-fact duly authorized in writing at the office of the Trustee, but only in the manner, subject to the limitation, and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer and surrender of this Bond, a new fully registered Bond of the same maturity will be issued to the transferee in exchange therefor. This Bond is issued with the intent that the laws of the State of Arkansas shall govern its construction.

The City and the Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving all payments due hereon and for all other purposes, and neither the City nor the Trustee nor any paying agent shall be affected by any notice to the contrary.

The Bonds are issuable only as a single fully registered Bond in the denomination of One Hundred Seventeen Thousand Six Hundred Dollars (\$117,600) and numbered R-1.

The owners of the Bonds shall have no right to enforce the provisions of the Authorizing Ordinance or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Authorizing Ordinance, or to institute, appear in and defend any suit or other proceedings with respect thereto, except as provided in the Authorizing Ordinance.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed under the Constitution and laws of the State of Arkansas, precedent to and in the issuance of the Bonds have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by this Bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that the Revenues have been pledged in accordance with the Acts sufficient to pay the Bonds and interest thereon until all of the Bonds and interest thereon have been fully paid and discharged.

IN WITNESS WHEREOF, the City of Austin, Arkansas, has caused this Bond to be executed by its Mayor and City Recorder/Treasurer and its corporate seal to be impressed herein, all as of the Dated Date shown above.

CITY OF AUSTIN, ARKANSAS

ATTEST:

By: _____
Mayor

City Recorder/Treasurer

(Form of Assignment)

ASSIGNMENT

FOR VAUE RECEIVED, _____
("Transferor"), hereby sells, assigns and transfers unto _____,
the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ as attorney to transfer the within Bond on the books kept
for registration thereof with full power of substitution in the premises.

DATE: _____

Transferor

GUARANTEED BY:

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or
a commercial bank or trust company.

REGISTRATION CERTIFICATE

Date of Registration	Name of Registered Owner	Signature of City Recorder/Treasurer

Section 6. (a) The City hereby expressly pledges, mortgages and appropriates to the Trustee all of the revenues received from the operation of the System (the "Revenues") after the adoption of this Ordinance, to secure the equal and ratable payment of the principal of and interest on the Bonds when due at maturity or at redemption prior to maturity, and as security for the performance of all other obligations of the City hereunder; and the Bonds are hereby secured by the lien of such pledges; and the Revenues shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as otherwise specifically provided in this Ordinance. The Bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional limitation. The Bonds are not general obligations of the City but are special obligations of the City payable solely from Revenues. Nothing herein shall be construed as requiring the City to use any funds or revenues from any sources other than the Revenues for the payment of the Bonds, but nothing herein shall be construed as prohibiting the City from doing so.

(b) The City, and the officers and employees of the City shall execute, perform and carry out the terms of this pledge in strict conformity with the provisions of this Ordinance.

Section 7. The following rates will be charged for sewer and will be billed to the inhabitants of the City every month in a single unified statement:

Rates

First 2,000 gallons	\$10.00 (minimum)
All over 2,000 gallons	\$2.00 per 1,000 gallons

The lowest rate per 1,000 gallons will be adjusted as necessary to assure the rate is greater than the cost of operation and maintenance per 1,000 gallons.

Fees for connecting to the System after construction begins will not be less than the cost to the System.

In the event that the City or any department, agency or instrumentality thereof shall avail itself of any of the facilities or services afforded by the System, the reasonable value thereof shall be charged against the City, or such department, agency or instrumentality, and shall be paid for as the charges therefore accrue. The revenues so received from the City shall be deemed to be revenues from the operation of the System, and shall be used and accounted for in the same manner as any other revenues derived from its operation; provided, however, that nothing herein shall be construed as requiring the City or any department, agency or instrumentality thereof to avail itself of the facilities or services afforded by the System.

The rates are deemed reasonable and necessary as the minimum rates to be charged and will produce total revenues sufficient to pay the total operation and maintenance expenses of the System and to provide for the payment of the principal of and interest on the Bonds and to create all funds herein provided.

The rates so fixed shall never be reduced, except as provided in Section 16(a) hereof, until the Bonds and interest thereon shall have been paid in full, and the rates shall, when necessary, be increased in an amount sufficient to provide for the maintenance of the funds hereinafter described.

Section 8. All Revenues derived from the operation of the System shall be paid as and when received into a special fund, in the name of the City, hereby designated the "City of Austin Sewer Revenue Fund" (the "Sewer Fund") to be held by the Trustee. All moneys at any time in the Sewer Fund shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on the Bonds, to the maintenance of the Debt Service Reserve at the required level, and otherwise as described herein.

Section 9. There shall be paid from the Sewer Fund into a fund designated the "City of Austin Sewer Operation and Maintenance Fund" (the "Operation and Maintenance Fund") to be held by the Trustee, beginning on the first business day of the month immediately following the month in which the Bonds are delivered and continuing on the first business day of each month thereafter while the Bonds are outstanding, an amount sufficient to pay the reasonable and necessary monthly expenses of operation, repair and maintenance of the System for such month and from which disbursements shall be made only for those purposes. Fixed annual charges, such as insurance premiums, and the cost of major repairs and maintenance expenses may be computed and set up on an annual basis and one-twelfth (1/12) of the amount thereof may be paid into the Operation and Maintenance Fund each month.

If, in any month, for any reason, there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of any deficiency shall be added to the amount otherwise required to be transferred and paid into the Operation and Maintenance Fund in the next succeeding month. If, in any fiscal year, a surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount which shall be necessary to defray the reasonable and necessary costs of operation, repair and maintenance of the System during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred and deposited into the Sewer Fund.

Section 10. (a) There is hereby established and created with the Trustee a trust fund of and in the name of the City which is designated "City of Austin, Arkansas 1997 Sewer Revenue Bond Fund" (the "Bond Fund"), and there is also hereby established with the Trustee a separate trust account in the Bond Fund which is designated "Debt Service Reserve Account (the "Debt Service Reserve"). Moneys in the Bond Fund shall be used in the following order of priority, as and when necessary, solely for the following purposes:

- (1) to pay the Trustee's and Paying Agent's expenses then due; and
- (2) to pay the principal of and interest on the Bonds then due; and
- (3) to maintain and fund the Debt Service Reserve.

Section 14. (a) Moneys held in the Sewer Fund, the Bond Fund, (excluding the Debt Service Reserve), and the Operation and Maintenance Fund, shall be invested and reinvested pursuant to the direction of the City, and in the Trustee's discretion in the absence of any direct instructions from the City, in Government Securities (which for purposes of this Ordinance is hereby defined to mean direct or fully guaranteed obligations of the United States of America), in certificates of deposit of banks which are insured by the Federal Deposit Insurance Corporation ("FDIC"), or, if in excess of One Hundred Thousand Dollars (\$100,000), are collateralized by Government Securities, or other investments as may, from time to time, be permitted by law, which shall mature, or which investments 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) Moneys held for the credit of the Debt Service Reserve shall be invested and reinvested pursuant to the direction of the City in Government Securities, or in certificates of deposit of banks which are insured by the FDIC, or, if in excess of One Hundred Thousand Dollars (\$100,000), are collateralized by Government Securities, which Government Securities and certificates of deposit shall mature, or which shall be subject to redemption at the option of the holder thereof, not later than ten (10) years after the date of investment.

(c) 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 investment shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund, except that interest earnings and profits on investments of moneys in the Debt Service Reserve which increase the amount thereof above the required level shall, to the extent of any such excess, be transferred from time to time out of the Debt Service Reserve into the Sewer Fund.

(d) Moneys so invested in Government Securities or in insured certificates of deposit of banks to the extent secured by FDIC need not be secured by the depositor bank or banks.

(e) In determining the value of the Bond Fund and the Debt Service Reserve, the Trustee shall credit investments at the market value thereof, as determined by the Trustee by any method selected by the Trustee in the Trustee's reasonable discretion. No less frequently than annually, and in any event on December 31 each year, the Trustee shall determine the value of each such fund and shall report such determination to the City. The Trustee shall sell or present for redemption any investments as necessary to provide money for the purpose of making any payment required hereunder. To the extent that any loss or reduction in value reduces the value of any such fund to a level lower than the level required hereunder, such loss or reduction shall be made up in each fund in the priority established in this Ordinance for payments from the Sewer Fund.

Section 15. (a) Principal and interest installments on the Bonds shall be prepayable prior to maturity as provided in the bond form set forth in Section 5 of this Ordinance. The City hereby covenants to deposit Bond proceeds not necessary to pay the cost of the Improvements into the Bond Fund, and to use such proceeds to redeem the Bonds at par on the first payment date following the date of the Completion Certificate.

(b) After making the monthly deposit in the Operation and Maintenance Fund, there shall be paid from the Sewer Fund into the Bond Fund, beginning on the first business day of the month immediately following the month in which the Bonds are delivered, and continuing on or before the first business day of each month thereafter until all the Bonds with interest thereon have been paid in full, or provision made for such payment, a sum equal to (1) the next monthly payment of principal and interest then due on the Bonds, (2) one-twelfth (1/12) of such payment of principal and interest on the Bonds, and (3) any sum necessary to maintain a Debt Service Reserve (as provided herein). Credit shall be given on the initial payments to the Bond Fund for any amounts of accrued interest therein.

(c) If the Revenues of the System are insufficient to make the required payment, on the first business day of the month, into the Bond Fund, 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 then next month.

(d) The Debt Service Reserve shall be established and maintained in an amount equal to \$6,408 (the "Debt Service Reserve Requirement"), to be accumulated at a rate of \$54 per month over a period of ten (10) years. The Debt Service Reserve shall be used solely for the purpose of paying principal of and interest on the bonds in the event there are insufficient funds in the Bond Fund on any payment date for that purposes. If, for any reason, there shall be a deficiency in the Bond Fund so that there is unavailable sufficient money therein to pay the principal of and interest on the Bonds as same become due, any sums then held in the Debt Service Reserve shall be used to the extent necessary to pay such principal of and interest on the Bonds, but if a payment is made for said purpose out of the Debt Service Reserve it shall be reimbursed from the first available funds in the Sewer Fund before any of the moneys in the Sewer Fund shall be used for any other purpose except making the payments hereinabove required to be made into the Bond Fund.

(e) When the moneys held in the Bond Fund, including the Debt Service Reserve, shall be and remain sufficient to pay the principal of and interest on the Bonds there shall be no obligation to make further payments into the Bond Fund. Any amount in the Debt Service Reserve in excess of the Debt Service Reserve Requirement shall be transferred to the Sewer Fund.

(f) If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments during the succeeding twelve (12) months on the Bonds and over and above the Debt Service Reserve Requirement, such surplus may be applied to the payment of the principal of and interest on the Bonds if they are called for redemption. All moneys deposited in the Bond Fund shall be expended within a thirteen-month period beginning on the date of deposit, and any amount received from investment of money held in the Bond Fund shall be expended within one (1) year from the date of receipt and in any event all money in the Bond Fund in excess of a carryover amount not to exceed the greater of (A) one year's earnings on the Bond Fund, or (B) one twelfth (1/12) of the annual debt service on the Bonds, shall be depleted at least once a year as provided in this Section or by transfer to the Sewer Fund.

(g) In addition to other security pledged herein, the Bonds shall be specifically secured by a pledge of all moneys and Revenues required to be placed into the Bond Fund. The pledge in favor of the Bonds is hereby irrevocably made according to the terms of this Ordinance, and the City and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

(h) When the Bonds have been paid within the meaning of this Ordinance, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and canceled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of the Bonds to be paid over or delivered to or at the direction of the City.

Section 11. Any surplus in the Sewer Fund, after making all disbursements and providing for all funds described above, may be used, at the option of the City, for the redemption of the Bonds prior to maturity in accordance with the redemption provisions on the face of the Bonds; for extensions, betterments and improvements to the System; or for any other lawful municipal purpose authorized by the City.

Section 12. When the Bonds herein authorized have been executed by the Mayor and City Recorder/Treasurer and the seal of the City impressed thereon, the Bonds shall be delivered to RECDS upon payment of the purchase price as provided herein (the "total sale proceeds"). The total sale proceeds shall be applied first to payment of expenses of issuing the Bonds, and the balances shall be deposited into a special fund established with the Trustee in the Sewer Fund which is designated the "Sewer System Construction Fund" (the "Construction Fund"). The moneys in the Construction Fund shall be used for accomplishing the construction and equipping of the Improvements and System and paying expenses incidental thereto with any unexpected balance to be deposited in the Bond Fund (herein defined).

Section 13. (a) Disbursements from the Construction Fund shall be made by check or voucher, signed by the Trustee and the Mayor only upon the basis of requisitions which shall specify the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; the purpose of the payment; and that the payment is a proper charge to the Construction Fund. Each requisition must be signed by the Mayor and Project Engineer. Each such check or voucher shall briefly specify the purpose of the expenditure. The Trustee shall keep records of all requisitions reflecting payment made from the Construction Fund.

(b) When the Improvements and System have been completed and all required expenses for and in connection with the accomplishment of the Improvements and System and the financing thereof have been paid, this fact shall be evidenced by a certificate executed by the Mayor, Project Engineer and RECDS, which certificate shall state, among other things, the date of the completion and that all obligations payable by the City have been discharged (the "Completion Certificate"). A copy of the Completion Certificate shall be filed with the Trustee.

(b) The Bonds shall be deemed paid when (1) there has been deposited with the Trustee an amount sufficient to pay the principal or redemption price of and interest on the Bonds to the date of redemption, or (2) there has been deposited with the Trustee, Government Securities (as defined in this Ordinance) that mature according to their terms and are non-callable or redeemable at the option of the holder thereof on or prior to the date of redemption of the Bonds and the principal or redemption price of and interest on which, together with any moneys on deposit with the Trustee, will provide an amount sufficient to pay in full the principal or redemption price of and interest on the Bonds when due; provided that such deposit shall not affect the tax exempt status of the interest on the Bonds or cause the Bonds to be classified as arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code (the "Code") and provided further, that if the Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given. In determining the sufficiency of the deposit there shall be considered the principal amount of such Government Securities and interest to be earned thereon until the maturity of such Government Securities.

(c) The Bonds paid either at or before maturity shall be canceled and shall not be reissued.

Section 16. So long as the Bonds are outstanding, it is hereby covenanted and agreed by the City with the owners of the Bonds that:

(a) The City covenants and agrees that the rates charged for services of the System heretofore fixed and established are not less than the minimum necessary to produce and will hereafter produce, and shall be maintained in amounts necessary to produce, total revenues at least sufficient to: pay operation and maintenance expenses of the System; pay the principal of and interest on the Bonds as it becomes due; and to create and maintain debt service reserves. The City further covenants that the rates shall never be reduced while the Bonds are outstanding unless (1) there is obtained from an independent certified public accountant a certificate that the net revenues of the System that will be derived from the proposed new rates, based upon the previous twelve (12) months of consumption, will be sufficient in amount for making the required deposit into the Bond Fund, and for maintenance of the Debt Service Reserve in the required amount, and leave a balance equal to at least 125% of the average annual principal and interest requirements on the Bonds and (2) the City is not in default under this Ordinance. The City further covenants and agrees that the rates shall be maintained in such manner as will produce net revenues at least sufficient to provide the required deposits into the Bond Fund and the Debt Service Reserve. The term "net revenues" as used in this Section, means all System Revenues, less the expenses of operation and maintenance of the System, including all expense items properly attributable to the operation and maintenance of the System determined in accordance with generally accepted accounting principles applicable to municipal water facilities, excluding depreciation and debt service.

(b) The City covenants and agrees that it will diligently collect the revenues and continuously operate the System as a revenue producing undertaking.

(c) The City covenants that so long as the Bonds authorized hereby are outstanding, that it will not mortgage, pledge or otherwise encumber the System, or any part thereof or any Revenues

derived from the operation thereof, except as herein specifically provided, and will not sell, lease or otherwise dispose of any substantial portion of the same. Nothing herein shall be construed to prohibit the City from disposing of worn out or obsolete System properties or from disposing of properties not being used and not useful in the operation of the System, provided that all revenues derived from the disposition of such properties shall be deposited in the Sewer Fund.

(d) The City covenants and agrees that it will duly observe and comply with all valid requirements of any governmental authority relative to the System, that it will not create or suffer to be created any lien or charge upon the System or any part thereof or upon the Revenues, except in accordance with the provisions of this Ordinance, and that, from such Revenues, it will pay or cause to be discharged or will make adequate provision to satisfy and discharge, within sixty (60) days after the same shall accrue, all lawful claims and demands for labor, materials supplies or other objects which, if unpaid, might by law become a lien upon the System or any part thereof or upon the Revenues therefrom; provided, however, that nothing contained in this Section shall require the City to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

(e) The City covenants and agrees that it will keep the System facilities insured against loss or damage, and maintain public liability and property damage insurance against claims for bodily injury or death and damage to property occurring upon, in or about the System facilities, in each case in an amount and against such risks as are usually insured against in connection with similar facilities and undertakings as the System. The City further covenants that it will maintain adequate fidelity insurance or bonds on the Trustee and all officers or employees responsible for handling funds of the System. All insurance required by this subsection (e) shall be effected with reputable insurance companies selected by the City, which usually insure risks similar in nature and monetary exposure. Policies of insurance provided for herein shall name the Trustee as a beneficiary to the extent of the Trustee's interest under this Ordinance. Copies of the certificates of the insurance provided for herein, or summaries thereof, shall be placed on file with the Trustee.

(f) The City covenants and agrees that it will not issue any bonds, or incur any obligation, either (i) secured by a prior lien on or pledge of System Revenues or (ii) on a parity of security with the Bonds, except the City reserves the right to issue additional bonds to finance or pay the cost of constructing any future extensions, betterments or improvements to the System, but the City shall not authorize or issue any such additional bonds ranking on a parity with the outstanding Bonds of this issue unless and until there have been procured and filed with the City Recorder/Treasurer and the Trustee a statement by an independent certified public accountant not in the regular employ of the City reciting the opinion, based upon necessary investigation, that the net revenues of the System for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 130% of the maximum principal and interest requirements on the then outstanding Bonds payable from System Revenues (including these Bonds and any parity bonds) and the additional bonds then proposed to be issued.

For the purposes of the computation required by this section, additional amounts may be added to the net revenues of the completed fiscal year immediately preceding the issuance of additional bonds, as follows: if, prior to the issuance of the additional bonds and subsequent to the first day of such preceding fiscal year, the City shall have increased its rates or charges imposed for services of the System there may be added to the net revenues of such fiscal year the additional net revenues which would have been received from the operation of the System during such fiscal year had such increase been in effect throughout such fiscal year, as reflected by a certificate of a duly qualified consulting engineer not in the regular employ of the City.

(g) The City covenants and agrees that it will faithfully and punctually perform all duties with reference to the Revenues and the Bonds, required by the Constitution and laws of the State of Arkansas and by this Ordinance, and apply the Revenues as herein provided.

(h) The City covenants and agrees that it will forthwith proceed to construct and equip the Improvements and System for which the Bonds shall be issued in accordance with plans and specifications which shall have been approved by the Project Engineer, and in conformity with law and all requirements of all governmental authorities having jurisdiction there over, and that it will expeditiously complete such construction and equipping.

(i) The City covenants to comply with the conditions contained in the Agreement.

(j) The City covenants that the Trustee and the Registered Owners of the Bonds shall have the protection of the provisions of Section 13 of Act 132 of the Acts of Arkansas of 1933, as amended, and that the City will diligently proceed to enforce the lien of unpaid sewer charges against the premises served by the System and to collect the amount due together with the penalty and expenses authorized by said Act 132. And, if the City shall fail to proceed within thirty (30) days after written request shall have been filed by the Trustee, the Trustee may, and upon the written request of the Registered Owners of not less than ten percent (10%) of the principal amount of the Bonds shall, proceed to enforce such lien in accordance with and pursuant to the authorization of said Act 132.

Section 17. The City shall cause proper books of accounts and records to be kept (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the operation of the System, and such books shall be available for inspection by the owners of the Bonds at reasonable time and under reasonable circumstances. If required by the RECDS the City agrees to have these System records audited by an independent certified public accountant at least once each year, and a copy of the audit shall be delivered to the Trustee and made available to the Registered Owners of the Bonds no later than 120 days after the end of the year. However, if the City fails or refuses to make the report after request by the RECDS, the Trustee, or Registered Owners of the Bonds, may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 18. All Revenues received by any agent of the City shall be deposited in such depository or depositories for the City as may be lawfully designated from time to time; subject, however, to the giving of security as now or as hereafter may be required by law, and provided that such depositories are members of FDIC. The Trustee shall be custodian of the Revenues. Payments from the respective Funds shall be made by check or voucher, signed by the Trustee and Mayor and drawn on the depository. The Trustee and any agent receiving System funds shall give bond in at least the amount of total funds in their custody at any one time. Each such check or voucher shall briefly specify the purpose of the expenditure.

Section 19. (a) If there be any default in the payment of the principal of and interest on any of the Bonds, or if the City defaults in the performance of any covenant contained in this Ordinance, the Trustee may, and upon the written request of the owners of not less than ten percent (10%) of the unpaid principal amount of the Bonds shall, by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the State of Arkansas and under this Ordinance, and to take any action or obtain any proper relief in equity or at law available under the Constitution and laws of the State of Arkansas. In the case of a default in the payment of the principal of and interest on any of the Bonds, the Trustee may, and upon written request of the Registered Owners of not less than ten percent (10%) of the unpaid principal amount of the Bonds shall, apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the Registered Owners of the Bonds with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, maintenance and repair and to pay any of the Bonds and interest outstanding and to apply the revenues in conformity with the laws of Arkansas and with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the City.

(b) No owner of any Bond shall have any right to institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State of Arkansas unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than ten percent (10%) of the unpaid principal amount of the Bonds shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State of Arkansas, or to institute such action, suit or proceeding in the Trustee's name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expenses and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no owner of any Bond hereby secured shall have any right in any manner whatever by his action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the

manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of any owner of the Bonds, and that any individual rights of action or other right given to the owner by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) All rights of action under this Ordinance or under any of the Bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in the Trustee's name and for the benefit of all the owners of the Bonds, subject to the provisions of this Ordinance.

(d) No remedy herein conferred upon or reserved to the Trustee or to the owners of the Bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law or by the Constitution of the State of Arkansas.

(e) No delay or omission of the Trustee or of any of the owners of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to the Trustee and to the owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(f) The Trustee upon the written request of the owners of not less than fifty percent (50%) of the unpaid principal amount of the Bonds shall waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 20. In the event the office of Mayor, City Recorder/Treasurer, or City Council shall be abolished or any two or more of such offices shall be merged or consolidated or in the event the duties of a particular office shall be transferred to another office or offices, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 21. The Trustee shall be responsible for the exercise of good faith and ordinary prudence in the execution of the Trustee's respective trusts.

Section 22. (a) The terms of this Ordinance shall constitute a contract between the City and the owners of the Bonds and no variation or change in the undertaking herein set forth shall be

made while any of the Bonds are outstanding, except as hereinafter set forth in subsection (b), and the owners of any of the Bonds may at any time for and on their own behalf or for and on behalf of all the owners of the Bonds, enforce the obligations of the City by a proper suit for that purpose.

(b) The Trustee may from time to time, and at any time, consent to any amendment, change or modification of this Ordinance or the adoption of any supplemental ordinance for the purpose of curing any ambiguity or formal defect or omission, or implementing any of the provisions hereof, provided, however, that the Trustee shall not consent to any other amendment, change or modification of this Ordinance or to the adoption of any supplemental Ordinance without the approval or consent of the owners of not less than seventy-five percent (75%) of the unpaid principal amount of the Bonds, and; provided, further, that nothing herein contained shall permit or be construed as permitting (1) an extension of the payment of the principal of or the interest on the Bonds issued hereunder, or (2) a reduction in the principal amount of the Bonds or the rate of interest thereon, or (3) the creation of a pledge of Revenues superior to the pledge created by this Ordinance, or (4) a privilege or priority of any of the Bonds over any other Bond, or (5) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

Section 23. (a) The City covenants with owners of the Bonds, who otherwise qualify by law to treat interest on the Bonds as tax-exempt, that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the Bonds to be subject to federal income taxation pursuant to existing laws at the time of issuance; and shall do and perform all acts permitted by law and necessary or desirable in order to assure that interest on the Bonds is exempt from federal income taxation, pursuant to existing laws at the time of issuance. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the Bonds will not be used directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) The City certifies that (i) it is a governmental unit of the State of Arkansas, (ii) 95% of the net proceeds of the sale of the Bonds will be used for governmental activities of the City within its jurisdiction and (iii) it and its subordinate entities, if any, have not issued and will not issue during the calendar year in which the Bonds are issued tax-exempt obligations (other than private activity bonds) having an aggregate face amount in excess of \$5,000,000.

(c) The City represents and covenants that it has not used or permitted the use of, and covenants that it will not use or permit the use of the System or the proceeds of the Bonds, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of the Bonds to make or finance loans to any person, (ii) while the Bonds are outstanding the System will only be used by persons on a basis as members of the general public and (iii) charges for use of the System while the Bonds are outstanding will be based upon rates for usage only and not by contract with any nongovernmental person.

(d) The City represents and covenants that it will take no action which would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code; specifically, (i) the payment of any portion of principal or interest with respect to the Bonds will not be guaranteed (directly or indirectly) by the United States or any agency or instrumentality thereof, (ii) none of the proceeds of the Bonds will be used in making loans the payment of any portion of the principal or interest with respect to which are to be guaranteed by the United States or any agency or instrumentality thereof, and (iii) none of the proceeds of the Bonds (exclusive of proceeds invested for an initial temporary period until needed for the purpose for which the Bonds were issued and proceeds deposited into the Bond Fund) will be invested (directly or indirectly) in federally insured deposits or accounts. Nothing in this section prohibits investments in bonds issued by the United States Treasury.

(e) The City agrees to make all filings with the Internal Revenue Service (specifically including Form 8038G) that are required from time to time to assure that the Bonds are and remain obligations on which the interest is excluded from gross income of the holder under Section 103(a) of the Code.

(f) Neither the City nor any related person (as defined in Section 147(a)(2) of the Code) shall acquire any of the Bonds in order to provide loans to finance the Improvements.

Section 24. The Gill Law Firm, a professional association, of Little Rock, Arkansas is hereby appointed to serve as Bond Counsel on behalf of the City in connection with the sale and issuance of the Bonds.

Section 25. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of the Ordinance.


Section 26. This Ordinance shall not create, nor shall any right of any kind arise hereunder, until the Bonds shall be issued and delivered, except as and to the extent necessary to collect the Revenues.

Section 27. All ordinances and resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 28. It is hereby ascertained and declared that the Improvements and System must be constructed and equipped as soon as possible for the needs of the City and its inhabitants, without which the life, health, safety and welfare thereof are jeopardized, and that the issuance of the Bonds and the taking of other action authorized by this Ordinance is necessary for the accomplishment thereof. 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.

ADOPTED THIS DATE: June 5, 1997

APPROVED:

A circular seal of the City of Austin, Texas, featuring the text "CITY OF AUSTIN TEXAS" around the perimeter and "1856" in the center.
Bobbie J. Horn
Mayor

ATTEST:

Wanda Luffin
City Recorder/Treasurer