

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A WATER RECLAMATION SYSTEM REVENUE BOND, SERIES 2023, FOR THE PURPOSE OF RESTRUCTURING THE CITY'S SEWER REVENUE BONDS, SERIES 2013 AND SERIES 2016, AND WATER RECLAMATION SYSTEM REVENUE BONDS, SERIES 2018 AND SERIES 2019; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO; AND FOR OTHER PURPOSES.

WHEREAS, the City of Little Rock, Arkansas (the "City"), owns a sewer system (the "System"), which is identified as a Water Reclamation System and is operated by the Water Reclamation Commission of the City (the "Commission"); and,

WHEREAS, the City has outstanding the following bonds, among others, that are secured by revenues of the System: (i) City of Little Rock, Arkansas Sewer Revenue Bond, Series 2013 (the "2013 Bond"); (ii) City of Little Rock, Arkansas Sewer Revenue Bond, Series 2016 (the "2016 Bond"); (iii) City of Little Rock, Arkansas Water Reclamation System Revenue Bond, Series 2018 (the "2018 Bond"); and (iv) City of Little Rock, Arkansas Water Reclamation System Revenue Bond, Series 2019 (collectively with the 2013 Bond, the 2016 Bond and the 2018 Bond, the "RLF Bonds to be Exchanged"); and,

WHEREAS, the RLF Bonds to be Exchanged were issued to finance betterments and improvements to the System; and,

WHEREAS, the RLF Bonds to be Exchanged were purchased and are owned by the Arkansas Development Finance Authority ("ADFA" or the "Bondholder") as a part of the State Clean Water Revolving Loan Fund Program administered by the Arkansas Natural Resources Commission ("ANRC"); and,

WHEREAS, pursuant to a Bond Purchase and Exchange Agreement, which has been presented to and is before this meeting (the "2023 Purchase and Exchange Agreement"), the Bondholder and ANRC have agreed, effective October 15, 2023, to exchange the RLF Bonds to be Exchanged for one City of Little Rock, Arkansas Water Reclamation System Revenue Bond, Series 2023 (the "2023 RLF Bond") to be issued by the City in a principal amount equal to the outstanding aggregate principal amount of the RLF Bonds to be Exchanged on the effective date of the exchange; and,

1 **WHEREAS**, the City is authorized under Amendment No. 65 to the Arkansas Constitution and Title
2 14, Chapter 164, Subchapter 4, and Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987
3 Annotated (the "Authorizing Legislation"), to issue the 2023 RLF Bond in exchange for the RLF Bonds to
4 be Exchanged; and,

5 **WHEREAS**, in addition to the RLF Bonds to be Exchanged, the City has outstanding the following
6 bonds secured by revenues of the System: (a) its Sewer Revenue Bond, Series 2007B (the "Series 2007B
7 Bond"), authorized by Ordinance No. 19,769, adopted June 19, 2007, as amended by Ordinance No. 21,906,
8 adopted October 20, 2020 (collectively, the "2007B Ordinance"); (b) its Sewer Revenue Bond, Series
9 2009A (the "Series 2009A Bond"), authorized by Ordinance No. 20,074, adopted March 10, 2009, as
10 amended by Ordinance No. 21,907, adopted October 20, 2020 (collectively, the "2009A Ordinance"); (c)
11 its Sewer Refunding Revenue Bonds, Series 2014 (the "Series 2014 Bonds"), authorized by Ordinance No.
12 20,937, adopted September 16, 2014 (the "2014 Ordinance"); (d) its Sewer Refunding Revenue Bonds,
13 Series 2015 (the "Series 2015 Bonds"), authorized by Ordinance No. 20,994, adopted February 24, 2015
14 (the "2015 Ordinance"); (e) its Sewer Refunding Revenue Bonds, Series 2016B (the "Series 2016B
15 Bonds"), authorized by Ordinance No. 21,317, adopted October 18, 2016 (the "2016B Ordinance"), (f) its
16 Water Reclamation System Revenue Bonds, Series 2017 (the "Series 2017 Bonds"), authorized by
17 Ordinance No. 21,479, adopted September 19, 2017 (the "2017 Ordinance"); (g) its Water Reclamation
18 System Revenue Bond, Series 2020 (the "Series 2020A Bond") authorized by Ordinance No. 21,845,
19 adopted February 18, 2020 (the "2020A Ordinance"); (h) its Water Reclamation System Refunding Bonds,
20 Series 2020B (the "Series 2020B Bonds") authorized by Ordinance No. 21,905, adopted October 20, 2020
21 (the "2020B Ordinance"); (i) its Water Reclamation System Revenue Bond, Series 2020C (the "Series
22 2020C Bond") authorized by Ordinance No. 21,912, adopted October 20, 2020 (the "2020C Ordinance")
23 and (j) its Water Reclamation System Refunding Revenue Bonds, Taxable Series 2021 (the "Series 2021
24 Bonds") authorized by Ordinance No. 22,021, adopted August 3, 2021 (the "2021 Ordinance"); and,

25 **WHEREAS**, the Bondholder proposes to pledge the 2023 RLF Bond as collateral for the payment of
26 its Revolving Loan Fund Revenue Bonds (the "ADFA Bonds") pursuant to its general bond resolution, as
27 amended or supplemented from time to time, to the bank or trust company to be named as trustee thereunder
28 (the "ADFA Trustee"); and,

29 **WHEREAS**, the City is required to pay to ADFA, as servicer, a servicing fee equal to 1% per annum
30 of the outstanding principal amount of the 2023 RLF Bond (the "Servicing Fee").

31 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY**
32 **OF LITTLE ROCK, ARKANSAS:**

33 **Section 1.** The exchange of the 2023 RLF Bond for the RLF Bonds to be Exchanged is hereby
34 approved. The Mayor is hereby authorized and directed to execute and deliver the 2023 Purchase and
35 Exchange Agreement on behalf of the City and to take all action required on the part of the City to fulfill

1 its obligations under the 2023 Purchase and Exchange Agreement. The 2023 Purchase and Exchange
2 Agreement is hereby approved in substantially the form submitted to this meeting with such changes as
3 may be approved by the Mayor, his execution to constitute complete evidence of such approval.

4 **Section 2.** Under the authority of the Constitution and laws of the State of Arkansas (the "State"),
5 including particularly the Authorizing Legislation, the 2023 RLF Bond is hereby authorized and ordered
6 issued in the principal amount of One Hundred Sixty-Nine Million, Nine Hundred Ninety-Three Thousand,
7 Nine Hundred Forty-Nine Dollars (\$169,993,949.00), which will be the outstanding aggregate principal
8 amount of the RLF Bonds to be Exchanged on October 15, 2023.

9 The 2023 RLF Bond shall bear interest at the rate of 1.25% per annum based upon a 360-day year of
10 twelve (12) consecutive thirty (30)-day months. The 2023 RLF Bond shall be dated as of October 15, 2023.
11 Interest shall be payable on April 15, 2024, and on each April 15th and October 15th thereafter. Principal
12 shall payable in installments on April 15, 2024, and on each October 15th and April 15th thereafter until the
13 unpaid principal is paid in full as follows:

14
15 (Remainder of page intentionally left blank.)

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
04/15/24	\$1,999,102.66	04/15/39	\$2,796,347.47
10/15/24	2,021,592.57	10/15/39	2,827,806.39
04/15/25	2,044,335.48	04/15/40	2,859,619.21
10/15/25	2,067,334.26	10/15/40	2,891,789.93
04/15/26	2,090,591.77	04/15/41	2,924,322.56
10/15/26	2,114,110.93	10/15/41	2,957,221.19
04/15/27	2,137,894.67	04/15/42	2,990,489.93
10/15/27	2,161,945.99	10/15/42	3,024,132.94
04/15/28	2,186,267.89	04/15/43	3,058,154.43
10/15/28	2,210,863.40	10/15/43	3,092,558.67
04/15/29	2,235,735.61	04/15/44	3,127,349.96
10/15/29	2,260,887.63	10/15/44	3,162,532.65
04/15/30	2,286,322.62	04/15/45	3,198,111.14
10/15/30	2,312,043.75	10/15/45	3,234,089.89
04/15/31	2,338,054.24	04/15/46	3,270,473.40
10/15/31	2,364,357.35	10/15/46	3,307,266.22
04/15/32	2,390,956.37	04/15/47	3,344,472.97
10/15/32	2,417,854.63	10/15/47	3,382,098.29
04/15/33	2,445,055.49	04/15/48	3,420,146.90
10/15/33	2,472,562.37	10/15/48	3,458,623.55
04/15/34	2,500,378.69	04/15/49	3,497,533.06
10/15/34	2,528,507.96	10/15/49	3,536,880.31
04/15/35	2,556,953.68	04/15/50	3,576,670.22
10/15/35	2,585,719.41	10/15/50	3,616,907.75
04/15/36	2,614,808.74	04/15/51	3,657,597.97
10/15/36	2,644,225.35	10/15/51	3,698,745.95
04/15/37	2,673,972.88	04/15/52	3,740,356.84
10/15/37	2,704,055.08	10/15/52	3,782,435.85
04/15/38	2,734,475.69	04/15/53	3,824,988.25
10/15/38	2,765,238.54	10/15/53	3,868,019.41

1

2 The 2023 RLF Bond will be registered as to both principal and interest, payable to the Bondholder, or
3 registered assigns, as set forth hereinafter in the bond form, and shall be numbered R-1.

1 Payment of principal and interest shall be by check or draft mailed to the Bondholder at its address
2 shown on the bond registration books of the City which shall be maintained by the City Clerk as Bond
3 Registrar, without presentation or surrender of the 2023 RLF Bond (except upon final payment) and such
4 payments shall discharge the obligation of the City to the extent thereof. The City Clerk shall keep a
5 payment record and make proper notations thereon of all payments of principal and interest.

6 Payment of principal and interest shall be in any coin or currency of the United States of America
7 which, as at the time of payment, shall be legal tender for the payment of debts due the United States of
8 America. When the principal of and interest on the 2023 RLF Bond have been fully paid, it shall be
9 canceled and delivered to the City Clerk.

10 **Section 3.** The 2023 RLF Bond shall be executed on behalf of the City by the Mayor and City Clerk
11 and shall have impressed thereon the seal of the City. The 2023 RLF Bond is not a general obligation of
12 the City but is a special obligation, the principal of and interest on which, and Servicing Fee in connection
13 therewith, are secured by a pledge of and are payable from revenues derived from the System ("Revenues").
14 The pledge of Revenues is subordinate to the pledge in favor of the Series 2007B Bond, the Series 2009A
15 Bond, the Series 2014 Bonds, the Series 2015 Bonds, the Series 2016B Bonds, the Series 2017 Bonds, the
16 Series 2020A Bond, the Series 2020B Bonds, the Series 2020C Bond and the Series 2021 Bonds
17 (collectively, the "Prior Bonds"). The 2023 RLF Bond and interest thereon shall not constitute an
18 indebtedness of the City within any constitutional or statutory limitation.

19 **Section 4.** The 2023 RLF Bond shall be in substantially the following form and the Mayor and City
20 Clerk are hereby authorized and directed to make all the recitals contained therein:

21
22
23 (form of bond)

24
25 UNITED STATES OF AMERICA

26 STATE OF ARKANSAS

27 COUNTY OF PULASKI

28 CITY OF LITTLE ROCK

29 1.25% WATER RECLAMATION SYSTEM REVENUE BOND, SERIES 2023

30
31 No. R-1

\$169,993,949

32
33 KNOW ALL MEN BY THESE PRESENTS:

1 That the City of Little Rock, Pulaski County, Arkansas (the "City"), for value received, hereby
2 acknowledges itself to owe and promises to pay to the Arkansas Development Finance Authority, or
3 registered assigns, solely from the special fund provided as hereinafter set forth, the principal sum of
4

5 ONE HUNDRED SIXTY-NINE MILLION NINE HUNDRED NINETY-THREE
6 THOUSAND NINE HUNDRED FORTY-NINE DOLLARS
7

8 with interest on the unpaid balance of the total principal amount at the rate of 1.25% per annum. The
9 principal and interest shall be payable in such coin or currency of the United States of America as at the
10 time of payment shall be legal tender for the payment of debts due the United States of America.

11 Interest on the unpaid balance of the total principal amount shall be payable on April 15, 2024, and on
12 each April 15th and October 15th thereafter. Principal shall be payable in installments on April 15, 2024,
13 and on each April 15th and October 15th thereafter until the unpaid principal is paid as follows:
14

<u>Date</u>	<u>Amount</u>
-------------	---------------

15
16
17 (There will be inserted the schedule set forth in Section 2 of this ordinance.)
18

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

23 This bond is issued in exchange for the City's Sewer Revenue Bonds, Series 2013 and Series 2016 and
24 Water Reclamation System Revenue Bonds, Series 2018 and Series 2019, which bonds provided financing
25 of the costs of constructing betterments and improvements to the City's Sewer System which is now
26 identified as a Water Reclamation System (the "System"). This bond is issued pursuant to and in full
27 compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly
28 Title 14, Chapter 164, Subchapter 4 and Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987
29 Annotated, and pursuant to Ordinance No. 22,240 of the City, duly adopted and approved on the 21st day
30 of March, 2023 (the "Authorizing Ordinance"). Reference is hereby made to the Authorizing Ordinance
31 for the details of the nature and extent of the security and of the rights and obligations of the City and the
32 registered owner of this bond.

33 This bond may be assigned with the written approval of the Arkansas Natural Resources Commission
34 ("ANRC"), and in order to effect such assignment the assignor shall promptly notify the City Clerk by
35 registered mail, and the assignee shall surrender this bond along with a written approval of ANRC to the

1 City Clerk for transfer on the registration records. Every assignee shall take this bond subject to all
2 payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the
3 City Clerk), prior to such surrender for transfer.

4 This bond may be prepaid at the option of the City from funds from any source, in whole but not in
5 part, at any time on and after October 15, 2033, at a prepayment price equal to the principal amount
6 outstanding, plus accrued interest to the prepayment date. Notice shall be given of such prepayment to the
7 owner of this bond or registered assigns at least ninety (90) days prior to the prepayment date. Such notice
8 shall be in writing mailed to the address of the owner of this bond or registered assigns at the address as
9 reflected on the bond registration books of the City Clerk.

10 This bond does not constitute an indebtedness of the City within any constitutional or statutory
11 limitation or provision, and the taxing power of the City is not pledged to the payment of the principal of
12 or interest on this bond. This bond is a special obligation payable solely from the net revenues derived
13 from the operation of the System. In this regard, the pledge of net System revenues is subordinate to the
14 pledge of System revenues to the City's Sewer Revenue Bonds, Series 2007B and 2009A, Sewer Refunding
15 Revenue Bonds, Series 2014, 2015 and 2016B, Water Reclamation System Revenue Bonds, Series 2017,
16 2020 and 2020C and Water Reclamation System Refunding Revenue Bonds, Series 2020B and Taxable
17 Series 2021, so long as any of such bonds are outstanding. A sufficient amount of System revenues to pay
18 principal and interest has been duly set aside and pledged as a special fund for that purpose, identified as
19 the "2023 ADFA Bond Fund," in the Authorizing Ordinance. The City has fixed and has covenanted and
20 agreed to maintain rates for use of the System which shall be sufficient at all times to at least provide for
21 the payment of the reasonable expenses of operation and maintenance of the System, provide for the
22 payment of the principal of and interest on all the outstanding bonds to which System revenues are pledged
23 as the same become due, to establish and maintain debt service reserves and to provide a depreciation fund,
24 all as set forth in the Authorizing Ordinance. This bond is issued with the intent that the laws of the State
25 shall govern its construction.

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

32 **IN WITNESS WHEREOF**, the City of Little Rock, Arkansas has caused this bond to be executed in
33 its name by its Mayor and City Clerk, thereunto duly authorized, and its corporate seal to be affixed, all as
34 of the _____ day of _____, 2023.

1 CITY OF LITTLE ROCK, ARKANSAS

2
3 By _____
4 Mayor
5

6 ATTEST:

7
8 _____
9 City Clerk
10

11 (SEAL)

12
13 [A Registration Certificate
14 shall be attached to the 2023 RLF Bond.]
15

16 Section 5. The City has heretofore fixed sewer rates by Ordinance No. 21,080, adopted on August
17 4, 2015. Reference is hereby made to such ordinance for the details thereof and other provisions pertaining
18 thereto, which sewer rates are hereby confirmed and continued as provided therein.

19 The City covenants and agrees that the rates established will produce gross Revenues at least sufficient
20 to pay monthly operation, maintenance and funded depreciation expenses of the System, pay the principal
21 of and interest on all outstanding bonds and notes to which Revenues are pledged (collectively, "System
22 Bonds"), as the same become due, pay the financing, servicing and administrative fees in connection
23 therewith as the same become due, and create and maintain any required debt service reserves ("Required
24 Payments"). The City covenants always to maintain rates (including increases as necessary) which will
25 provide for the Required Payments. The rates in effect for sewer service at this time shall not be reduced
26 without the prior written consent of ANRC and the Bondholder.

27 None of the facilities or services afforded by the System shall be furnished without a charge being made
28 therefor. In the event that the City or any department, agency or instrumentality thereof shall avail itself of
29 the facilities and services afforded by the System, the reasonable value of the service or facilities so afforded
30 shall be charged against the City or such department, agency or instrumentality and shall be paid for as the
31 charges accrue. The revenues so received shall be deemed to be revenues derived from the operation of the
32 System and shall be used and accounted for in the same manner as the other revenues derived from the
33 operation of the System.

34 Section 6. All of the provisions of the 2007B Ordinance, the 2009A Ordinance, the 2014 Ordinance,
35 the 2015 Ordinance, the 2016B Ordinance, the 2017 Ordinance, the 2020A Ordinance, the 2020B
36 Ordinance, the 2020C Ordinance and the 2021 Ordinance (the "Prior Bond Ordinances") (including those

1 incorporated therein by reference), as now in effect, and except those provisions clearly inapplicable hereto,
2 including, without limitation, the provisions pertaining to the collection, the investment and the handling
3 of Revenues and funds, and to the operation, maintenance and care of the System, are hereby made
4 applicable hereto and are incorporated herein by reference as though fully set forth at this point. The effect
5 of the above covenant shall be to continue the applicable provisions in full force and effect even after the
6 payment of the Prior Bonds and until the 2023 RLF Bond is paid, or provision made therefor.

7 **Section 7.** The City covenants that it will continuously operate the System as a revenue-producing
8 undertaking and will not sell or lease the same, or any substantial portion thereof, without the prior written
9 approval of the Bondholder and ANRC; provided, however, that nothing herein shall be construed to
10 prohibit the City from making such dispositions of properties of the System and such replacements and
11 substitutions for properties of the System as shall be necessary or incidental to the efficient operation of the
12 System as a revenue-producing undertaking.

13 **Section 8.** (a) After making the required payments into the special fund heretofore created and
14 designated "Sewer Operation and Maintenance Fund" and into the bond funds for the Prior Bonds and any
15 additional bonds having a priority on the pledge of Revenues over the pledge in favor of the 2023 RLF
16 Bond and after paying the financing, servicing and administrative fees in connection with the Prior Bonds,
17 there shall be paid from the special fund heretofore created and designated "Sewer Fund" into an account
18 of the City in a special fund to be created by ADFA (the "2023 ADFA Bond Fund") for the purpose of
19 paying the principal of and interest on the 2023 RLF Bond the amounts specified in (b) below.

20 (b) Commencing on the first business day of each month commencing in November 2023, there shall
21 be deposited from moneys in the Sewer Fund into the 2023 ADFA Bond Fund an amount equal to 1/6 of
22 the amount of interest on and principal of the 2023 RLF Bond next due.

23 (c) If Revenues are insufficient to make the required payment on or before the first business day of
24 the following month into the 2023 ADFA Bond Fund, then the amount of any such deficiency in the
25 payment made shall be added to the amount otherwise required to be paid into the 2023 ADFA Bond Fund
26 on the first business day of the next month.

27 (d) When the moneys held in the 2023 ADFA Bond Fund which represent payments by the City and
28 interest earnings thereon or proceeds of investments therefrom (collectively, "City Funds") shall be and
29 remain sufficient to pay in full the principal of and interest on the 2023 RLF Bond, the City shall not be
30 obligated to make any further payments into the 2023 ADFA Bond Fund.

31 (e) All moneys in the 2023 ADFA Bond Fund representing City Funds shall be used solely for the
32 purpose of paying the principal of and interest on the 2023 RLF Bond and the City shall automatically
33 receive a credit for the amount of such City Funds on hand in the 2023 ADFA Bond Fund and available for
34 the payment of any principal and interest currently due on an interest or principal payment date irrespective
35 of whether ADFA has applied or caused to be applied such funds on that date for such purpose. The City

1 shall receive a credit for all earnings and income derived from the investment of the City Funds each April
2 15th and October 15th and such earnings and income shall be credited against the next six (6) monthly
3 payments.

4 (f) The 2023 RLF Bond shall be specifically secured by a pledge of all Revenues required to be
5 placed into the 2023 ADFA Bond Fund. This pledge in favor of the 2023 RLF Bond is hereby irrevocably
6 made according to the terms of this ordinance, and the City and its officers and employees shall execute,
7 perform and carry out the terms thereof in strict conformity with the provisions of this ordinance.

8 **Section 9.** After making the payments into the 2023 ADFA Bond Fund required by Section 8 hereof,
9 there shall be paid from the Sewer Fund the Servicing Fee to ADFA. The Servicing Fee shall be payable
10 on each date interest on the 2023 RLF Bond is due and shall be calculated on the same basis as interest on
11 the 2023 RLF Bond. The payment of the Servicing Fee is expressly made subordinate to the payment of
12 the principal of and interest on the 2023 RLF Bond.

13 **Section 10.** After making the required payments in accordance with Sections 8 and 9 hereof, there
14 shall be paid from the Sewer Fund into a special fund heretofore created and designated the "Sewer
15 Depreciation Fund" on or before the 15th day of each month while the 2023 RLF Bond is outstanding, 3%
16 of the Revenues which remain after the required payment into the Sewer Operation and Maintenance Fund
17 has been made. Once the Sewer Depreciation Fund reaches an amount equal to the greater of (a) the amount
18 required by the Prior Bond Ordinances or (b) Six Million, One Hundred Thousand Dollars (\$6,100,000.00)
19 (the "Required Level"), the City shall not be required to make further deposits into the Sewer Depreciation
20 Fund; provided, however, that monthly deposits must resume, if the Sewer Depreciation Fund drops below
21 the Required Level, until such time as the Required Level is again reached. The moneys in the Sewer
22 Depreciation Fund shall be used solely for the purpose of paying the cost of replacements made necessary
23 by the depreciation of the System. If in any fiscal year a surplus shall be accumulated in the Sewer
24 Depreciation Fund over and above the Required Level and over and above the amount necessary to defray
25 the cost of the probable replacements during the then current fiscal year and the next ensuing fiscal year,
26 such surplus may be transferred and paid into the Sewer Fund.

27 **Section 11.** The City shall assure that (1) not in excess of 10% of the proceeds of the 2023 RLF Bond
28 is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of
29 the interest due on the 2023 RLF Bond during the term thereof is, under the terms of the 2023 RLF Bond
30 or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used
31 for a Private Business Use or in payments in respect of property used or to be used for a Private Business
32 Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed
33 moneys used or to be used for a Private Business Use; and (2) that, in the event that both (A) in excess of
34 5% of the proceeds of the 2023 RLF Bond are used for a Private Business Use, and (B) an amount in excess
35 of 5% of the principal or 5% of the interest due on the 2023 RLF Bond during the term thereof is, under the

1 terms of the 2023 RLF Bond or any underlying arrangement, directly or indirectly, secured by any interest
2 in property used or to be used for said Private Business Use or in payments in respect of property used or
3 to be used for said Private Business Use or is to be derived from payments, whether or not to the City, in
4 respect of property or borrowed money used or to be used for said Private Business Use, then said excess
5 over said 5% of proceeds of the 2023 RLF Bond used for a Private Business Use shall be used for a Private
6 Business Use related to the governmental use of the improvements financed by the RLF Bonds to be
7 Exchanged.

8 The City shall assure that not in excess of 5% of the proceeds of the 2023 RLF Bond are used, directly
9 or indirectly, to make or finance a loan to persons other than state or local governmental units.

10 As used in this Section, "Private Business Use" means use directly or indirectly in a trade or business
11 carried on by a natural person or in any activity carried on by a person other than a natural person, excluding,
12 however, use by a State or Local Governmental unit and use as a member of the general public. Proceeds
13 of the 2023 RLF Bond shall mean the outstanding aggregate principal amount of the RLF Bonds to be
14 Exchanged.

15 **Section 12.** The principal and interest installments shall be prepayable prior to maturity as provided
16 in the bond form in Section 4 hereof.

17 **Section 13.** As long as the 2023 RLF Bond is outstanding, the City shall not issue or attempt to issue
18 any bonds having or claimed to be entitled to a priority of lien on Revenues over the lien securing the 2023
19 RLF Bond, including any and all future extensions, betterments and improvements to the System except as
20 provided in this Section.

21 The City may issue additional revenue bonds having a priority on or on a parity with the lien on
22 Revenues in favor of the 2023 RLF Bond to finance or pay the cost of constructing betterments and
23 improvements to the System or to refund outstanding System Bonds, if there shall have been procured and
24 filed with the City Clerk and the Bondholder a statement by a certified public accountant not in the regular
25 employ of the City (the "Accountant") reciting the opinion that (i) in the case of parity bonds either (A) the
26 Net Revenues (Net Revenues being gross Revenues less operation and maintenance expenses, but not
27 including depreciation) for the fiscal year preceding the year in which such additional bonds are to be issued
28 were not less than 110% of Total Annual Debt Service Requirements (Total Annual Debt Service
29 Requirements being the average annual debt service requirements (including principal, interest and
30 financing, servicing and administrative fees) on all outstanding System Bonds and the bonds then proposed
31 to be issued) or (B) the Net Revenues for the fiscal year succeeding the year in which such additional bonds
32 are to be issued are projected to be sufficient in amount, taking in consideration any enacted increase in
33 Revenues, to be not less than 110% of the Total Annual Debt Service Requirements, or (ii) in the case of
34 the senior lien bonds, either (A) the Net Revenues for the fiscal year preceding the year in which such
35 additional bonds are to be issued were not less than 120% of the Total Annual Debt Service Requirements

1 or (B) the Net Revenues for the fiscal year succeeding the year in which such additional bonds are to be
2 issued are projected to be sufficient in amount, taking into consideration any enacted increase in Revenues,
3 to be not less than 120% of the Total Annual Debt Service Requirements.

4 The additional bonds, the issuance of which is restricted and conditioned by this Section, shall not be
5 deemed to mean bonds the security and source of payment of which are subordinate and subject to the
6 priority of the 2023 RLF Bond and such additional bonds may be issued without complying with the terms
7 and conditions of this Section.

8 **Section 14.** It is covenanted and agreed by the City with the Bondholder, ADFA and ANRC that it
9 will faithfully and punctually perform all duties with reference to the System required by the Constitution
10 and laws of the State and by this ordinance, including, without limitation, the making and collecting of
11 reasonable and sufficient rates lawfully established for services rendered by the System, segregating
12 Revenues and applying them to the respective funds maintained pursuant to the Prior Bond Ordinances
13 and this ordinance.

14 The City covenants and agrees that the Bondholder shall have the protection of all the provisions of the
15 Authorizing Legislation, and that the City will diligently proceed to enforce those provisions to the end of
16 the Bondholder realizing fully upon its security. And, if the City shall fail to proceed within thirty (30)
17 days after written request shall have been filed by the Bondholder, the Bondholder may proceed to enforce
18 all such provisions.

19 If there be any default in the payment of the principal of or interest on the 2023 RLF Bond, or if the
20 City defaults in any 2023 ADFA Bond Fund requirement or in the performance of any of the other covenants
21 contained in this ordinance, the Bondholder may, by proper suit, compel the performance of the duties of
22 the officials of the City under the laws of the State. In the case of a default in the payment of the principal
23 of and interest on the 2023 RLF Bond, the Bondholder may apply in a proper action to a court of competent
24 jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the
25 Bondholder with power to charge and collect (or by mandatory injunction or otherwise to cause to be
26 charged and collected) rates sufficient to provide for the payment of the expenses of operation, repair and
27 maintenance and to pay the 2023 RLF Bond and interest outstanding and to apply Revenues in conformity
28 with this ordinance. When all defaults in principal and interest payments have been cured, the custody and
29 operation of the System shall revert to the City. No remedy herein conferred upon or reserved to the
30 Bondholder is intended to be exclusive of any other remedy or remedies herein provided or provided by
31 law, and every such remedy shall be cumulative and shall be in addition to every other remedy given
32 hereunder or given by law. No delay or omission of the Bondholder to exercise any right or power accrued
33 upon any default shall impair any such right or power or shall be construed to be a waiver of any default or
34 an acquiescence therein; and every power and remedy given by this ordinance to the Bondholder may be
35 exercised from time to time and as often as may be deemed expedient.

1 No waiver of any default shall extend to or affect any other existing or any subsequent default or
2 defaults or impair any rights or remedies consequent thereon. Any costs of enforcement of the 2023 RLF
3 Bond or of any provision of this ordinance, including reasonable attorney's fees, shall be paid by the City.
4 ADFA may enforce all rights and exercise all remedies available to the Bondholder in the event the
5 Servicing Fee is not paid when due.

6 **Section 15.** When the 2023 RLF Bond has been executed and sealed as herein provided, it shall be
7 delivered to the Bondholder in exchange for the RLF Bonds to be Exchanged marked "Cancelled."

8 **Section 16.** The terms of this ordinance shall constitute a contract among the City, the Bondholder,
9 ADFA and ANRC and no variation or change in the undertaking herein set forth shall be made while the
10 2023 RLF Bond is outstanding unless consented to in writing by the Bondholder, ADFA and ANRC.

11 **Section 17.** The Commission will keep proper records, books and accounts relating to the operation
12 of the System, which shall be kept separate from all other records and accounts of the City, in which
13 complete and correct entries shall be made of all transactions relating to the operation of the System in
14 accordance with generally accepted government accounting standards. Such books shall be available for
15 inspection by the Bondholder and ANRC, or the agent or the representative of either, at reasonable times
16 and under reasonable circumstances. The City agrees to have these records audited by an Accountant
17 selected by the Commission at least once each year.

18 In the event the Commission fails or refuses to furnish or cause such reports to be furnished, the
19 Bondholder may have the reports made, and the cost thereof shall be charged against the Sewer Operation
20 and Maintenance Fund.

21 **Section 18.** The City covenants and agrees that it will maintain the System in good condition and
22 operate it in an efficient manner and at reasonable cost. While the 2023 RLF Bond is outstanding, the City
23 agrees that it will insure, and at all times keep insured, in the amount of the actual value thereof, in a
24 responsible insurance company or companies selected by the Commission and authorized and qualified
25 under the laws of the State to assume the risk thereof, all above-ground structures of the System against
26 loss or damage thereto from fire, lightning, tornado, winds, riot, strike, civil commotion, malicious damage,
27 explosion, and against loss or damage from any other causes customarily insured against in connection with
28 similar facilities and undertakings as the System. In the event of loss, the proceeds of such insurance shall
29 be applied solely toward the reconstruction, replacement or repair of the System, and in such event the City
30 will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement
31 and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall
32 be deposited to the credit of the Sewer Fund, and if such proceeds shall be insufficient for such purposes,
33 the deficiency shall be supplied, first, from moneys in the Sewer Depreciation Fund, second, from moneys
34 in the Sewer Operation and Maintenance Fund, and third, from available moneys in the Sewer Fund.
35 Nothing herein shall be construed as requiring the City to expend any funds for reconstruction, replacement

1 or repair of the System or for operation and maintenance of the System or for premiums on its insurance
2 which are derived from sources other than insurance proceeds or Revenues, but nothing herein shall be
3 construed as preventing the City from doing so.

4 **Section 19.** The City agrees that the Bondholder may pledge the 2023 RLF Bond as security for the
5 ADFA Bonds, and the ADFA Trustee and/or the municipal bond insurer for the ADFA Bonds may exercise
6 any rights and remedies available to the Bondholder under this ordinance or the 2023 Purchase and
7 Exchange Agreement while the 2023 RLF Bond is pledged and/or the ADFA Bonds are insured. In
8 addition, the City agrees that while the 2023 RLF Bond is pledged and/or the ADFA Bonds are insured,
9 copies of all financial information shall be furnished to the ADFA Trustee and/or the Municipal Bond
10 Insurer.

11 **Section 20.** In the event the Offices of the Mayor, City Clerk, Board of Directors, or Commission
12 shall be abolished, or any two (2) or more of such offices shall be merged or consolidated, or in the event
13 the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy
14 in any such office by reason of death, resignation, removal from office, or otherwise, or in the event any
15 such officer shall become incapable of performing the duties of his office by reason of sickness, absence
16 from the City, or otherwise, all powers conferred and all obligations and duties imposed upon such office
17 or officer shall be performed by the office or officer succeeding to the principal function thereof, or by the
18 office or officer upon whom such powers, obligations, and duties shall be imposed by law.

19 **Section 21.** It is understood and agreed that the Commission, acting for and on behalf of the City, has
20 custody of and control over the System, operates, maintains and repairs the System and collects and handles
21 Revenues. Therefore, it is understood and agreed that even though there are some express references to the
22 Commission, all references herein to the City shall, when appropriate in view of the authority and
23 responsibility of the Commission, be construed to mean and include the Commission. So long as the
24 Commission operates the System for the City, performance by the Commission of any right or obligation
25 of the City hereunder shall be deemed performance by the City. The Commission presently consists of
26 Chris Marsh, Ganelle McBryde, Debbie Shock, Schawnee Hightower, Lauren Waldrip and Jonathan
27 Semans.

28 **Section 22.** The requirements of Ordinance No. 15,249, as they may relate to the authorization and
29 sale of the 2023 RLF Bond, are hereby waived.

30 **Section 23.** The provisions of this ordinance are hereby declared to be separable, and if any provision
31 shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of this
32 ordinance.

33 **Section 24.** Reference in this ordinance to "Bondholder" shall include the original Bondholder or any
34 registered assign thereof.

35 **Section 25. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or

1 word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or
2 adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and
3 effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of the
4 ordinance.

5 **Section 26. Repealer.** All laws, ordinances, resolutions, or parts of the same that are inconsistent with
6 the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

7 **PASSED: March 21, 2023**

8 **ATTEST:**

APPROVED:

9

10

11 _____
Susan Langley, City Clerk

_____ **Frank Scott, Jr., Mayor**

12 **APPROVED AS TO LEGAL FORM:**

13

14

15 _____
Thomas M. Carpenter, City Attorney

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

29 //

30 //

31 //

32 //

33 //

34 //

35 //