

ORDINANCE NO. 92-1

"AN ORDINANCE AUTHORIZING AND DIRECTING THE ISSUANCE OF \$1,845,500.00 PRINCIPAL AMOUNT OF SEWER UTILITY SYSTEM REVENUE BONDS, SERIES 1992-A, OF THE CITY OF GALENA, KANSAS, FOR THE PURPOSE OF PAYING A PORTION OF THE COSTS OF CONSTRUCTING AND EQUIPPING IMPROVEMENTS TO THE CITY'S SEWER SYSTEM, INCLUDING CONSTRUCTING AND EQUIPPING TWO PUMP STATIONS, CONSTRUCTING AN NEW FORCE MAIN, MODIFYING THE EXISTING LAGOON, AND REPAIRING AND REPLACING A PORTION OF THE SEWER COLLECTION SYSTEM PIPELINES AND APPURTENANCES THERETO, PRESCRIBING THE FORM AND DETAILS OF SAID REVENUE BONDS, PROVIDING FOR THE COLLECTION, SEGREGATION, AND APPLICATION OF THE REVENUES OF SAID CITY FOR THE PURPOSES AUTHORIZED BY LAW, INCLUDING PAYING COSTS OF OPERATION AND MAINTENANCE OF SAID SYSTEM, PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS OF SAID CITY FROM THE PROCEEDS OF FEDERAL FUNDS PROVIDED BY LOAN BY THE UNITED STATES OF AMERICA ACTING THROUGH THE FARMERS HOME ADMINISTRATION, UNITED STATES DEPARTMENT OF AGRICULTURE, OR IN THE ABSENCE THEREOF FROM THE REVENUE OF SAID SYSTEM, AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO."

WHEREAS, pursuant to Resolution No. 90-16 and to the provisions of K.S.A. 10-1201, et seq., the governing body of the City of Galena, Kansas, (the "City"), has declared it necessary to make certain repairs, alterations, extensions, reconstructions, enlargements and improvement (hereinafter jointly known as "Improvements:") to the City's sewer utility system; and

WHEREAS, pursuant to Resolution No 90-15, duly passed and adopted the 19th day of June, 1990, notice was given as provided by law of the intention of the City to make such improvements at a total estimated cost of \$3,183,639, and to issue sewer utility system revenue bonds in a sum of not to exceed \$1,845,500 to provide funds for the purpose of paying a portion of the costs of such improvements to be paid by the City of Galena and the balance thereof to be paid from the proceeds of \$287,339 Kansas Department of Commerce (KDOC) Grant \$1,031,100 from the proceeds of a grant received from the United States of America, Farmers Home Administration, and \$19,700 from general funds of the City on-hand for such purpose; and

WHEREAS, such notice was duly published in the official city paper of the City on the 27th day of June, 1990, and no written protests were filed with the City Clerk within 15 days thereafter against the making of such improvement or against the issuance of such bonds; and

WHEREAS, the City has applied for federal funds to pay a portion of the costs of said improvements and that said funds have been approved by the United States Department of Agriculture, Farmers Home Administration (FmHA), as follows:

Grant	\$1,931,100
Permanent Long-Term Loan	\$1,845,500

The balance of the improvement funds being provided from \$19,700 from

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funds currently on-hand of the City, and \$287,339 from the proceeds of a Kansas Department of Commerce Grant, with the permanent loan funds being provided by the FmHA upon completion of the construction of the improvements.

WHEREAS, the improvements have been duly approved by the governing body of the City and it now deems and declares it necessary and advisable to authorize and provide for the issuance of sewer utility system revenue bonds in the amount of \$1,845,500 for the purpose of paying a portion of the cost of such improvements which are to be subsequently funded by the proceeds of the loan to be made to the City by the FmHA upon completion of construction of the improvements, said bonds to constitute a first lien upon the sewer utility system revenues of the City as to the payment of principal and interest; and

WHEREAS, the City hereby finds and determines that it is necessary and essential to provide for the payment of such portion of the costs of such improvements, extensions and enlargements by the issuance of Sewer Utility System Revenue Bonds, Series 1992-A, in the amount of \$1,845,500 pursuant to K.S.A. 10-101 et seq., and K.S.A. 10-1201 et seq, and all acts amendatory, supplementary and complimentary thereto;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALENA, KANSAS, THAT:

SECTION 1. Authorization. There are hereby authorized and directed to be issued pursuant to and in accordance with K.S.A. 10-1201, et seq., and all acts amendatory, supplementary and complimentary thereto, negotiable Bonds, Series 1992-A, of the City of Galena, Kansas (the "Bonds"), in the aggregate principal amount of \$1,845,500 for the purpose of paying a portion of the cost of improving the City's sewer utility system by constructing and equipping two pump stations, constructing a new force main, modifying the existing lagoon, and repairing and replacing a portion of the sewer collection system pipelines and the appurtenances thereto. The Bonds and the interest thereon are to be paid by the City solely from the proceeds of federal funds received in the form of a loan from the United States Department of Agriculture, Farmers Home Administration, or in the event such federal aid is for any reason not received, solely from the revenues derived from the operation of its sewer utility system, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source.

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SECTION 2. Terms. The Bonds shall be issued as bearer bonds without coupons and shall be in the denomination of \$100,000 or any integral multiple thereof not exceeding the principal amount of the Bonds, except one Bond in the denomination of \$145,500, be numbered in such manner as the City shall determine and bear interest at a rate of 7% per annum.

The Bonds shall be dated as of March 15, 1992. The Bonds shall bear interest from their respective dates payable upon maturity.

The Bonds shall mature on March 15, 1993, (the "Principal Payment Date").

The principal of and interest on the Bonds shall be payable in lawful money of the United States of America by check or draft at the Office of the Treasurer of the City of Galena, City Hall, 315 West Seventh in the City of Galena, Kansas 66739.

SECTION 3. Redemption. The Bonds are subject to redemption prior to maturity at the City's option at anytime at the redemption price of the par value of the principal amount thereof, plus accrued interest to the redemption date, without premium.

In the event the City shall call any of said Bonds for redemption and payment prior to their respective maturities, notice of the redemption consisting of a copy of the order, resolution, or ordinance calling such bonds will be mailed by certified mail to the State Treasurer, to the Paying Agent if other than the State Treasurer, and to the last known address of the purchaser of the Bonds not less than thirty (30) days prior to the redemption date. Interest will not be payable on the Bonds redeemed after the redemption date if notice has been given as herein provided and if sufficient monies have been deposited on or prior to the redemption date to pay the principal of, and interest on the Bonds to be redeemed to the redemption date.

SECTION 4. Execution. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have impressed or imprinted thereon the seal of the City or a facsimile thereof. The City Clerk shall register the Bonds in her office and shall execute the certificate of the Secretary on the Bonds to that effect by manual or facsimile signature. The State Treasurer shall register the Bonds in the municipal bond register in

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her office and shall execute the certificate of the State Treasurer on the Bonds to that effect, by manual signature and shall have impressed or imprinted thereon the official seal of the State Treasurer or a facsimile thereof. In case any officer of the City, County or of the State whose signature or whose facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes, the same as if he or she remained in office until delivery.

The Bonds shall contain recitals as required by the laws of the State of Kansas, including a recital that said Bonds are issued pursuant to the authority of K.S.A. 10-1201 et seq., and all acts supplementary thereto. When executed by the signatures of the Mayor and City Clerk, registered as herein provided, said Bonds shall import absolute verity and shall be conclusive in favor of all persons purchasing said Bonds of the fact that all conditions precedent have been had and performed and exist in due and proper form to authorize the issuance thereof.

SECTION 5. Form. The Bonds issued under this Ordinance shall be substantially in the form hereinafter set forth in Exhibit "A" which is attached hereto and incorporated herein by reference as if fully set forth.

SECTION 6. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the City may execute a new Bond of like date, maturity, denomination and interest rate, as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the City, and, in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City evidence of such loss, theft or destruction satisfactory to the City, together with an indemnity satisfactory to the City. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate Bond, the City may pay the same without surrender thereof. The City may charge the Owner of such Bond their reasonable fees and expenses in connection with replacing a Bond or Bonds mutilated, stolen, lost or destroyed.

SECTION 7. Non-Arbitrage Covenant. That so long as any of the principal of and interest on the Bonds herein authorized remain outstanding and unpaid, the City covenants with each of the purchasers

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and Registered Owners of said Bonds that it will make no use of the proceeds of the Bonds herein authorized which, if such use had been reasonably expected on the date of issuance of such Bonds, would have caused said Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, and the City will comply with and cause to be complied with, all applicable requirements of the Code and the rules and regulations of the United States Treasury Department thereunder for so long as any of said Bonds remain outstanding and unpaid.

SECTION 8. General Tax Covenant. The City hereby covenants with each and all of the owners of the Bonds, herein authorized, that so long as any of the bonds remain outstanding and unpaid, the City will make no use of the proceeds of the Bonds which would violate the applicable provisions of the 1986 Internal Revenue Code relating to Tax Exempt obligations; and the City will take such action as may be necessary to comply with all applicable requirements of said Code and the rules and regulations of the United States Treasury Department thereunder for so long as any of the Bonds remain outstanding and unpaid.

SECTION 9. Defeasance. When the principal of, redemption premium, if any, and interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted hereby shall cease and determine. The Bonds and interest shall be deemed to have been paid and discharged within the meaning of this Ordinance if there shall have been deposited with a bank located in the State of Kansas and having full trust powers, at or prior to the maturity or redemption date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations payment of the principal of and interest on which are guaranteed by, the United States of America, which, together with the interest to be earned on such Government Obligations, will be sufficient for the payment of the principal of the Bonds, the redemption premium thereon, if any, and interest thereon to the date of maturity or redemption, as the case may be, or if default in such payment shall have accrued on such date, then to the date of the tender of such payments; provided always that if any such Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall

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have been given as hereinbefore provided. Any monies which at any time shall be deposited with said Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest, shall be and are hereby assigned, transferred and set over to such Kansas bank in trust for the respective holders of the Bonds, and such monies shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All monies deposited with said Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

SECTION 10. Creation of Various Accounts. Simultaneously with the issuance of the Bonds, there shall be created by the city the following accounts:

- (a) Construction Account
- (b) Principal and Interest Account;
- (c) Cost of Issuance Account;
- (d) Excess Earnings Account;
- (e) Sewer System Account;
- (f) Operations and Maintenance Account;
- (g) Bond Reserve Account.

SECTION 11. Disposition of Bond Proceeds. The proceeds of the Bonds, upon issuance and delivery thereof shall be deposited as follows:

- (a) In the City's Principal and Interest Account, a sum equal to the accrued interest, and any premium paid on the Bonds. Monies in the Principal and Interest Account shall be used exclusively for the payment of the principal of, and interest on the Bonds.
- (b) In the Cost of Issuance Account, the sum of \$ -0-. Monies in the Cost of Issuance Account shall be used to pay a portion of the cost of issuing the Bonds, including Fiscal Agent or underwriter fees, all printing, signing and mailing expenses in connection therewith, all legal fees and expenses of Bond Counsel and other legal counsel, any accounting expenses incurred in connection with determining yield on the Bonds, or investment of the proceeds thereof, and in connection with receiving municipal bond insurance or ratings on the Bonds. Any funds remaining in the Cost of Issuance Account 30 days prior to the first Principal Payment Date shall be transferred to the Principal and Interest Account to pay a portion of the first principal due on the Bonds. Any issuance costs not paid from Bond Proceeds shall be paid from other funds of the City.
- (c) The balance of the proceeds of the Bonds shall be deposited by the City immediately on receipt in the Construction Account and shall be used solely for the purpose of paying a portion of the costs of constructing the improvements to the City sewer utility system.

The Construction Account shall be used by the City solely for the purpose of paying a portion of the cost of constructing the improvements to the City's Sewer Utility System. Any surplus remaining in said Construction Account shall be deposited immediately in the Principal and Interest Account hereinafter established and applied to the next

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installment of principal due on the Bonds.

SECTION 12. Deposits into and Payments from the Excess Earnings Account. For the purposes of this Ordinance, the term "Excess Investment Earnings" means an amount equal to the sum of (i) the excess of (a) the aggregate amount earned from the date of issue on all Non-purpose obligations in which gross proceeds of the Bonds are invested, over (b) the amount that would have been earned if the yield on such Nonpurpose Obligations had been equal to the yield on the Bonds, plus (ii) any income attributable to the excess described in (i) above. "Nonpurpose Obligation" means any security (other than an obligation described in Section 103(a) of the 1986 Internal Revenue Code) which gross proceeds of an issue are invested and which is not acquired to carry out the governmental purpose of the issue. "Yield" means that yield which when used in computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the purchase price. The yield on both the bonds and the Nonpurpose Obligations shall be calculated by the use of the same frequency of interval of compounding interest. The "yield of the issue" means the rate per annum set forth in the closing certificate of the City for the Bonds.

(a) Not less frequently than annually, the City shall determine the Excess Investment Earnings on each fund or account held by the City pursuant to this Ordinance and shall deposit, from moneys held on deposit in such fund or account, into the Excess Earnings Account an amount equal to such Excess Investment Earnings.

(b) All income or interest on the investment of moneys on deposit in the Excess Earnings Account shall remain in the Excess Earnings Account.

(c) The provisions in paragraphs (a) and (b) above shall not be applied to earnings so long as (i) the total annual earnings in the Principal and Interest Account and in the Bond Reserve Account do not exceed the sum of \$100,000, or (ii) all of the gross proceeds of the sale of the Bonds other than a minor portion (the lesser of 5% of the gross proceeds of the issue or \$100,000) have been spent on or before six months from the date of issuance of the Bonds, and the balance of said gross proceeds have been spent within one year of the date of issuance of the Bonds, including all sums earned by the investment of Bond proceeds.

(d) Within 30 days after the retirement of all of the Outstanding

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Bonds, the City shall pay to the United States all amounts then held on deposit in the Excess Earnings Account.

(e) In the event that all of the gross proceeds of the sale of the Bonds other than a minor portion (the lesser of 5% of the gross proceeds of the issue or \$100,000) have been spent on or before six months from the date of issuance of the Bonds, and the balance of said gross proceeds have been spent within one year of the date of issuance of the Bonds, including all sums earned by the investment of Bond proceeds, moneys then on deposit in the Excess Earnings Account may be used to pay interest on the Bonds accrued during the construction of the Improvements; provided that such payment or reimbursement is made on or prior to one year from the date of issuance of the Bonds, so that one year from the date of issuance of the Bonds, the only Bond proceeds, including sums earned by the investment of Bond proceeds then held by the City are amounts held in the Principal and Interest Account either (a) representing income from the investment of moneys in the Principal and Interest Account, or (b) representing interest on the Bonds accrued during the period of construction of the Improvements.

SECTION 13. Payment. The City is hereby authorized and directed to withdraw from the Principal and Interest Account sums sufficient to pay both principal of and interest on the Bonds as and when the same become due.

SECTION 14. Sewer System Account. The City covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, all revenues derived from the operation of the sewer utility system of the City and all proceeds of the loan from the FmHA shall be paid into a separate account hereby created in the Treasury of the City, to be known and hereinafter referred to as the "Sewer System Account", and shall be used only for the purposes authorized by law, including the cost of operation, maintenance, extension and improvement of said sewer utility system, and paying the principal and interest on the Bonds. The City covenants and agrees that the moneys in said Sewer System Account will be administered and used for said purposes solely as hereinafter provided.

SECTION 15. Funding of Accounts. The City covenants and agrees that in the event the loan from the Farmers Home Administration is for any reason not received on or before March 15, 1993, and said proceeds used to timely pay the principal and interest upon the Bonds, until

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said Bonds are fully paid, beginning on or as of March 15, 1993, as to the Operation and Maintenance Account, the Principal and Interest Account and the Bond Reserve Account and continuing on the first day of each month thereafter except as hereinafter specified, and so continuing for so long as any of the Bonds remain outstanding, the City will pay, deposit and credit out of the moneys then on hand in the Sewer System Account into the accounts hereinbefore named the following amounts:

(a) There shall first be paid, deposited and credited monthly from the moneys in the Sewer System Account into the Operation and Maintenance Account such amount from the moneys then on hand or thereafter accruing to the Sewer System Account as, together with any moneys already held in said Operation and Maintenance Account, may be required in the opinion of the governing body of the City in order that said Operation and Maintenance Account may have on hand at all times, an amount sufficient to pay the reasonable and proper expenses of operating and maintaining the City's sewer utility system and keeping the same in good repair and working order during the next succeeding period of three months. Moneys paid, deposited and credited into said Operation and Maintenance Account shall be expended and used by the City for the sole purpose of paying the reasonable and proper expenses of operating and maintaining the City's sewer utility system and keeping the same in good repair and working order, including, without limiting the generality of the foregoing salaries, wages, costs of water and materials and supplies, insurance, cost of power, and any payments authorized by the governing body of the City under any retirement or other plan authorized by law and adopted by the governing body of the City for the benefit of the employees of the City. No moneys in said account shall be used for the purpose of extending or enlarging said system, or for other purposes generally defined by public utility accountants as "capital additions." Notwithstanding anything to the contrary herein, in no event shall the amount maintained in the Operation and Maintenance Account exceed \$92,275.

(b) When and after there shall be in the Sewer System Account the amount required to be maintained therein under the provisions of paragraph (a) in this Section 15 of this Ordinance, the City shall pay, deposit the credit monthly from the moneys in the Sewer System Account into the Principal and Interest Account created by Section 10 of this Ordinance to the extent necessary to meet at the maturity

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thereof all interest and principal of the Bonds. All revenues credited to said Principal and Interest Account shall be expended and used by the City first for the sole purpose of paying the principal of and interest on Series 1992-A Bonds as and when the same become due.

(c) All funds received as proceeds from the \$1,845,500 loan to be made by the FmHA to the City upon the completion of construction on or before March 15, 1993, shall be paid, deposited and credited upon receipt into the Sewer System Account into the Principal and Interest Account and applied, to the extent necessary, to meet at or before maturity thereof of all interest and principal on the Series 1992-A Bonds. All amounts credited to said Principal and Interest Account from the proceeds of said loan shall be expended and used by the City for the sole purpose of paying the principal of and the interest on the Series 1992-A Bonds as and when the same become due. In the event such loan proceeds are for any reason not timely received, then, in that event, after all amounts at the time required to be paid, deposited and credited under the foregoing provisions of paragraphs (a) and (b) of this section shall have been so paid, deposited and credited, then the remaining moneys in the Sewer System Account shall be apportioned, deposited and credited to the Principal and Interest Account and shall be expended and used by the City for the sole purpose of paying the principal of and interest on the Series 1992-A Bonds.

(d) When and after there shall be in the Sewer System Account the amount required to be maintained therein under the provisions of paragraphs (a), (b) and (c) of this Section 15 of this Ordinance, the City shall pay, deposit and credit monthly from the moneys in the Sewer System Account into the Bond Reserve Account monthly deposits of \$1,000 commencing April 1, 1993, until said bond reserve fund totals, upon complete funding, the sum of \$184,500. All amounts credited to and deposited in said Bond Reserve Account shall be expended and used solely to prevent any default in the payment of the principal of and interest on the Series 1992-A Bonds if the monies in the Principal and Interest Account are insufficient to pay such principal and interest or if no other funds are available for such purpose. Monies accumulated in the Bond Reserve Account may be invested as permitted by law. Except as required by Section 12 of the Ordinance, interest earned on the Bond Reserve Account shall be retained and deposited in the Bond Reserve Account until such time as the account reaches its maximum of \$184,500 and shall, thereafter, be deposited in the Principal and Interest Account.

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If and when the amount of said Bond Reserve Account shall aggregate the amount of not less than \$184,500 no further payments into said account shall be required, but if the City shall ever be compelled to use and expend any part of said account for the purposes authorized and such use shall reduce the amount in said account below the sum of \$184,500, then the City covenants and agrees that after making all allocations and credits at the time required to be made under the provisions of paragraphs (a), (b) and (c) of this Section it will thereafter continue or resume the allocations of \$1,000 per month into the Bond Reserve Account until said account aggregates not less than \$184,500. The obligation of the City to make said payments, deposits and credits into said Bond Reserve Account shall be subordinate to the obligation of the City to pay from the Sewer System Account the interest on and principal of any sewer utility system revenue bonds of the City in conformity with the provisions hereinafter contained and standing on a parity with the Bonds herein authorized.

The City covenants and agrees no portion of the Bond proceeds shall be deposited into or allocated to the Bond Reserve Account. Nothing contained herein shall be deemed to prevent the city from allocating additional monies to the Bond Reserve Account from time to time until such time as the maximum amount of \$184,500 is attained.

(e) After all amounts at the time required to be paid, deposited and credited under the foregoing provisions of paragraphs (a), (b), (c) and (d) of this Section shall have been so paid, deposited and credited, then the remaining moneys in the Sewer System Account shall be apportioned, deposited and credited to the General Funds of the City.

SECTION 16. Notice of Insufficiency. If at any time the revenues derived by the City from the operation of its sewer utility system shall be insufficient to make any payment, or deposit, the City shall at once give written notice of such insufficiency by United States registered mail to the underwriters, Stifel Nicolaus & Company, at Wichita, Kansas, and the City shall make good the amount of such deficiency by making such payment, deposit or credit out of the first available revenues thereafter received by the City from the operation of said system. In such event, all such payments, deposits and credits shall be made in the order hereinbefore specified in Section 15 hereof.

SECTION 17. Investments. Moneys held in the Accounts herein created and established may be invested by the City in obligations of

of the United States Government or agencies or instrumentalities thereof, in obligations guaranteed by the United States Government or any agency or instrumentality thereof, or in certificates of deposits or other savings or time deposits of a state or national bank or federal or state chartered savings and loan association, which are secured by United States Government obligations or insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Association, or in other investments allowed by Kansas law in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said Accounts or funds. Interest on any bonds or other obligations held in any Account, shall accrue to and become a part of said Account, except as required by Section 12 hereof.

Cash moneys in each of the Funds and Accounts herein created and established shall be deposited in a bank(s) or federal or state chartered savings and loan association with home offices located in the State of Kansas, which are members of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Corporation, and all such deposits shall be adequately secured by the banks or savings and loan associations holding such deposits in accordance with Kansas law.

The City shall maintain all records of investments, at least every year make appropriate determinations of yields on investments, and remit all required amounts to the United States at least every five years and upon retirement of the Bonds, all as set forth and required by the Code, and Section 1.103-15AT of the Internal Revenue Service Regulations.

All investments in Nonpurpose Obligations made pursuant to this Section shall be made at the established market price of such Nonpurpose Obligations, and all sales of Nonpurpose Obligations shall be at the established market price of such Nonpurpose Obligations, so as to avoid the making of a "prohibited payment" under the provisions of Temp. Treas. Reg. 1-103-15AT.

In the case of the purchase or sale of a certificate of deposit issued by a commercial bank, such purchase or sale shall be at a price equal to the bona fide bid price quoted by a dealer who maintains an active secondary market in such certificates of deposit. If there is no active secondary market in such certificates of deposit, the certificate of deposit shall have a yield: (A) as high or higher than the

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yield on comparable obligations traded on an active secondary market, as certified by a dealer who maintains such a market, and (B) as high or higher than the yield available on comparable obligations offered by the United States Treasury. The certification described in the preceding sentence must be executed by a dealer who maintains an active secondary market in comparable certificates of deposit and must be based on actual trades adjusted to reflect the size and term of that certificate of deposit and the stability and reputation of the person issuing the certificate of deposit.

The city shall maintain records designed to show compliance with the provisions of this Section for at least six years after the payment of all of the Outstanding Bonds.

Section 18. Lien. The principal of and interest on the Bonds shall be payable from the proceeds of a \$1,845,500 loan to be made to the City by the FmHA on or prior to March 15, 1993, or, in the event such federal aid is for any reason not received, then, in such event, solely from the revenues derived from the rates, fees and charges collected by said City from the operation of its sewer utility system and not from any other fund or source. Said Bonds shall not be or constitute a first lien on the revenues produced from said City's Sewer Utility System. The Bonds herein authorized shall not have any priority over any other sewer utility system revenue bonds of the City hereafter issued in accordance with the provisions hereinafter contained which bonds shall stand on a parity with the Bonds herein authorized nor shall any other sewer utility system revenue bonds of the City hereafter issued and payable from the revenues of the City's sewer utility system have any priority with respect to the payment of principal or interest out of such revenues over the series of Bonds herein authorized.

SECTION 19. Covenants. The City covenants with each of the purchasers and owners of any of its Bonds herein authorized, that so long as any of said Bonds remain outstanding and unpaid:

(a) The City will fix, establish, maintain and collect such rates, fees or charges for the use of or services rendered by the sewer utility system of said City, including improvements, extensions and enlargements thereof, which rates, fees and charges shall be sufficient to pay the costs of operation, improvement and maintenance of said system, and to pay the principal of and interest on all bonds issued by

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said City against said system, and which rates, fees and charges will annually produce a net income, after the payment of operation and maintenance expenses, in an amount equal to 110% of the annual principal and interest requirements.

(b) None of the facilities or services offered by the sewer utility system of the City will be furnished to any user without a reasonable charge being made therefor.

(c) The City will maintain the sewer utility system in good repair and working order and will operate the same in an efficient manner and at reasonable costs.

(d) Except as may be permitted by Section 20 hereof, the City will not mortgage, pledge or otherwise encumber its water system or any part thereof or any improvements, extensions or enlargements thereof, nor will it sell, lease or otherwise dispose of said system or any material part thereof without the consent of 50% or more of the outstanding bondholders; provided, however, the City may dispose of any property which has become obsolete, nonproductive, or otherwise not usable to the advantage of the City. Any proceeds derived from the sale of such property shall become a part of the Sewer System Account.

(e) The City will carry and maintain a reasonable amount of all-risk insurance, including liability insurance, upon the properties constituting its sewer utility system insofar as they are of an insurable nature, the amount of such insurance being that which would normally be maintained and carried by a municipality engaged in a similar type of business. In the event of loss or damage, the City, with all reasonable dispatch, will use the proceeds of such insurance in reconstructing and replacing the property damaged or destroyed, or, if such reconstruction or replacement be unnecessary, then said proceeds shall be placed in the Sewer System Account established hereunder. The cost of all insurance referred to in this paragraph shall be paid as an operating cost out of the revenues of the City's sewer utility system.

(f) The City will install and maintain proper books, records and accounts in which complete and correct entries will be made of all dealings and transactions of or in relation to, the property, business and affairs of the City's sewer utility system. Such accounts shall show the amount of revenue received from said system, the application of such revenue, and all financial transactions in connection therewith. Said books shall be kept by the City according to standard accounting

practices applicable to the operation of such a facility. The City operates its sewer utility system on the basis of the fiscal year coinciding with the calendar year. Annually, at the end of each fiscal year, the City will cause an audit to be made by a firm of certified public accountants of the operation of its sewer utility system, and if such audit shall disclose that proper provisions have not been made for all of the requirements of this Ordinance and the laws of the State of Kansas, then the Board shall promptly proceed to cause to be charged for the use of ~~onr~~ services rendered by the sewer utility system, rates which will adequately provide for such requirements, laws and regulations. Said audit shall be completed as soon as possible after the end of each fiscal year and a copy thereof shall be filed in the office of the City Clerk where it shall be open to public inspection. Duplicate copies of such audit shall be sent promptly by mail to Stifel Nicolaus & Company, at Wichita, Kansas, and, if the Bonds are hereafter accepted for pledging, to the Kansas Bank Commissioner in Topeka, Kansas.

(g) The holder of any of the Bonds shall have the right at all reasonable times to inspect the sewer utility system of the City and all records, accounts and data relating thereto, and any such holder shall be furnished by the City with such information concerning the system and operation thereof that he may reasonably request.

(h) The City will punctually perform all duties with respect to the operation of its sewer utility system now or hereafter imposed upon the City by the Constitution and laws of the State of Kansas and by the provisions of this Ordinance.

SECTION 20. Additional Bonds or Encumbrances. The City covenants and agrees that so long as any of the Bonds herein authorized remain outstanding and unpaid, said City will not issue any additional bonds or other obligations payable out of the revenues of its sewer utility system or any part thereof, which are superior to the Bonds herein authorized; provided, however, nothing contained herein or in this Ordinance shall be deemed to prevent, and the City shall specifically have the power to issue any such additional bonds on a parity or equality with the Bonds herein authorized provided all of the following conditions are met:

(a) The City shall not be in default in making any payment at the time required to be made by it into any of the funds or accounts

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created by or referred to in Section 15 of this Ordinance or required by law.

(b) The average annual net revenues derived by the City from the operation of its sewer utility system, shall net revenues being defined as the gross revenues less only the reasonable expenses of operation, maintenance and repair of such system but before any other payments or charges including depreciation for the prior fiscal year next preceding the issuance of additional bonds, shall have been equal to at least one hundred ten percent (110%) of the maximum amount required to be paid out of said revenues in the succeeding fiscal year on account of both principal and interest becoming due with respect to all sewer utility revenue bond obligations of the City then outstanding, including the additional revenue bonds proposed to be issued, PROVIDED, HOWEVER, that if the City shall have made any increase in the rates, fees and charges of its sewer utility system and such increased rates, fees and charges shall not have been in effect during all of the prior fiscal year which ended next preceding the authorization of additional bonds, or if the City proposes to issue additional revenue bonds for the purpose of expanding, extending or adding to its existing sewer utility system or systems to serve additional members, the consulting engineers of the City shall make a detailed investigation and report as to the amount of the annual net income (as hereinbefore defined) that the City would have received during said fiscal year if the rates or charges of the City, including any increase therein made as aforesaid, had been in effect during the whole of said year and if the City had included any such expanded, extended or added to sewer utility system proposed to be constructed with the proceeds of additional revenue bonds proposed to be issued, and if said engineer or engineers shall certify:

(i) That said average annual net income which the City would have received during said fiscal year next preceding the authorization of the additional bonds if the City's rates, fees and charges, including any increase therein made as aforesaid, had been in effect and if any such sewer utility system so proposed to be constructed with the proceeds of additional bonds had been a part of the City's sewer utility system, would have been equal to at least one hundred ten percent (110%) of the maximum amount required to be paid out of said income in any succeeding fiscal year on account of both principal and interest becoming due with respect to all water revenue bond obligations of the City, including the additional revenue bonds proposed to be issued; and

(ii) That the issuance of the additional sewer utility revenue bonds is advisable and will not impair the ability of the City to pay, when due, the principal of or interest on the Bonds herein authorized or to meet all obligations resting upon the City by reason of the covenants and agreements contained in this resolution,

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then the City may issue such additional sewer utility revenue bonds.

Said report and certificate of said consulting engineer or engineers shall be filed in the office of the City Clerk and a duplicate copy thereof shall be sent promptly by said engineers to the underwriters, Stifel Nicolaus & Company.

Additional sewer utility revenue bonds or encumbrances (mortgages, pledges, notes, etc.) of the City issued in conformity with the conditions hereinbefore in this Section set forth shall stand on a parity with the Bonds herein authorized and shall enjoy complete equality of lien on and claim against the revenues of the City's sewer utility system with the Bonds herein authorized and the City may make equal provision for paying said bonds or encumbrances and the interest thereon out of the Sewer System Account and may likewise provide for the creation of a reasonable bond fund for the payment of such additional bonds and the interest thereon out of moneys in said Sewer System Account.

Notwithstanding the foregoing, if the City shall not at the time be in default in the performance of any covenant, agreement or obligation contained in this Ordinance, the City may issue additional sewer utility revenue bonds or mortgage, pledge or otherwise encumber its sewer utility system (the "encumbrances") for the purpose of improving, extending, enlarging, repairing or altering the sewer utility system of the City and provide that the principal of and interest on said revenue bonds or encumbrances shall be payable out of the revenues of said system, provided said revenue bonds shall be junior and subordinate to the revenue bonds herein authorized. In the event of the issuance of any such junior and subordinate bonds or encumbrances, the City may pay the principal of and interest on such bonds or encumbrances from moneys in the Sewer System Account after making all payments and credits required at the time to be made under the provisions of paragraphs (a), (b) and (c) of Section 15 hereof, and prior to making any payments or credits required to be made under the provisions of paragraph (d) of Section 15 hereof.

SECTION 21. Default. The City agrees that if it shall default in the payment of the principal of or interest on any of its revenue Bonds herein authorized as the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or if the Mayor or the City Clerk or

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any of the officers, agents, or employees thereof shall fail or refuse to comply with any of the provisions of this Ordinance or of the statutes of the State of Kansas, then, at any time thereafter and while such default shall continue, the holders of twenty-five per cent (25%) in amount of the Bonds herein authorized then outstanding may, by written notice to the City filed in the office of the City Clerk or delivered in person to said City Clerk, declare the principal of all Bonds herein authorized then outstanding to be due and payable immediately, and upon any such declaration given as aforesaid, all of said Bonds shall become and be immediately due and payable, anything in this Ordinance or in said Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said Bonds shall have been so declared to be due and payable all arrears of interest upon all of said outstanding Bonds except interest accrued but not yet due on such Bonds and all arrears of principal upon all of said Bonds shall have been paid in full, and all other defaults, if any, by the City under the provisions of this Ordinance and under the provisions of the statutes of the State of Kansas shall have been cured, then and in every such case, the holders of a majority in amount of the Bonds herein authorized then outstanding, by written notice to the City given as hereinbefore specified, may rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any rights consequent thereon.

In case any suit, action or proceeding taken by any bondholder on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to such bondholder, then and in every such case the City and the bondholder shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the bondholders shall continue as though no such proceedings have been taken. No one or more bondholders secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of such outstanding Bonds.

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SECTION 22. Contract. The provisions of this Ordinance, including the covenants and agreements hereinbefore contained, shall constitute a contract between the City and the holders of the Bonds herein authorized.

Nothing contained in this Ordinance, however, shall be construed as imposing on the City any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Bonds herein authorized.

No remedy conferred hereby upon any holder of the Bonds herein authorized is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred hereby. No waiver of any default or breach of duty or contract by the holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of the holder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holders of the Bonds, then, and in every such case, the City and the holders of the Bonds shall be restored to their former positions and rights and remedies as if no such suit, action or other proceeding had been brought or taken.

SECTION 23. Amendment. The provisions of the Bonds authorized by this Ordinance and the provisions of this Ordinance may be modified or amended at any time by the City by Ordinance duly adopted by the City's Mayor or City Clerk without the consent of or notice to any of the holders of the Bonds, for any one or more of the following purposes: (a) to cure any ambiguity or formal defect or omission in this Ordinance or to make any other change not prejudicial to the holders of the Bonds; (b) to grant to or confer upon the holders of the Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the holders of the Bonds; (c) to more precisely identify the improvements; and (d) to conform such

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Ordinance to the 1986 Internal Revenue Code, as hereafter amended, or future applicable federal law concerning tax exempt obligations; provided, however, that no such modification or amendment shall permit or be construed as permitting (a) the extension of the maturity of the principal of any of the Bonds herein authorized, or the extension of the maturity of any interest on any Bonds herein authorized, or (b) a reduction in the principal amount of any Bond or the rate of interest thereon, or (c) a reduction in the aggregate principal amount of Bonds: the consent of the holders of 100% of the outstanding Bonds are required for any such amendment or modification. Every amendment or modification of a provision of the Bonds or of this Ordinance to which the written consent of the bondholders is given as above provided shall be expressed in a resolution of the City amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. It shall not be necessary to note on any of the outstanding Bonds any reference to such amendment or modification, if any. A certified copy of each such amendatory or supplemental resolution, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the City Clerk and shall be made available for inspection by the holder of any Bond or prospective purchaser or holder of any Bond authorized by this Ordinance, and, upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Ordinance will be sent by the City Clerk to any such bondholder or prospective bondholder.

SECTION 24. Sale of the Bonds. The Bonds shall be sold and delivered to the original purchasers thereof, Stifel Nicolaus & Company, upon payment of the purchase price thereof, being the principal amount thereof and accrued interest from the date of the Bonds to the date of delivery.

SECTION 25. Authorization of Execution. The Mayor and City Clerk are hereby authorized and directed to prepare and execute in the manner hereinbefore specified the Bonds of the City herein authorized, and to cause said Bonds to be registered as provided by law and by this Ordinance.

SECTION 26. Further Authority. The Mayor and City Clerk, together with all officers, employees, agents and representatives of the City are hereby further authorized and directed to take or cause to be taken all actions necessary or desirable for the purpose of carrying out

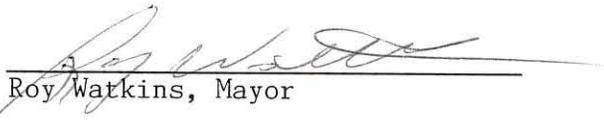
and giving effect to the transactions contemplated by this Ordinance.

SECTION 27. "Qualified Tax Exempt Obligation" Designation. The City does hereby elect and designates the Series 1992-A Bonds as a "Qualified Tax-Exempt Obligation" as defined in Section 265 (b) (3) of the Internal Revenue Code of 1986 (the "1986 Code"). The City represents and warrants that it is a political subdivision and that it reasonably anticipates and hereby represents and warrants that it will not issue during calendar year 1992 qualified tax exempt obligations in an amount in excess of \$10,000,000.00.

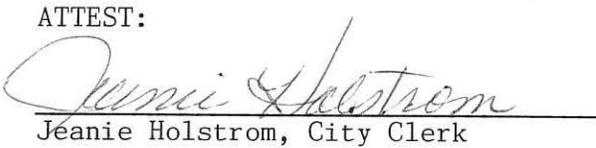
SECTION 28. Invalidity. If any part of this Ordinance shall be held invalid, the invalidity thereof shall not affect the other provisions of this Ordinance.

SECTION 29. Effective Date. This Ordinance shall take effect and be in force from and after its passage and adoption.

PASSED AND ADOPTED by the governing body of the City of Galena, Kansas, this 3rd day of March 1992.



Roy Watkins, Mayor

ATTEST:


Jeanie Holstrom, City Clerk

(SEAL)

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