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City of Conway, Arkansas
Ordinance No. O-12-36

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$25,000,000 OF WASTEWATER REVENUE IMPROVEMENT BONDS, SERIES 2012A, BY THE CITY OF CONWAY, ARKANSAS FOR THE PURPOSE OF FINANCING THE COST OF CERTAIN CAPITAL IMPROVEMENTS TO THE CITY'S WASTEWATER SYSTEM; AUTHORIZING THE EXECUTION AND DELIVERY OF A THIRD SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2012A BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2012A BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2012A BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas (the "City"), a city of the first class, presently owns a wastewater collection and treatment system (the "Wastewater System") serving the residents of the City, which Wastewater System is operated and maintained by the Conway Corporation, a nonprofit corporation organized and existing under the laws of the State of Arkansas (the "Corporation"), pursuant to an exclusive franchise to operate the Wastewater System granted to the Corporation by the City; and

WHEREAS, the City also presently owns an electric generation and distribution system (the "Electric System") serving the residents of the City, which Electric System is operated and maintained by the Corporation pursuant to a lease from the City and an exclusive franchise to operate the Electric System granted to the Corporation by the City; and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 and Arkansas Code Annotated Sections 14-164-401 *et seq.* (Repl. 1998 & 2011 Supp.) (as from time to time amended, the "Act") to issue and sell its wastewater revenue bonds for the purpose of financing the cost of improvements to the Wastewater System; and

WHEREAS, pursuant to the provisions of Ordinance No. O-92-20 of the City, adopted and approved on April 28, 1992, the City has previously issued its Sewer Revenue Bond, Series 1992 (the "Series 1992 Bond"), in the original principal amount of not to exceed \$13,700,000; and

WHEREAS, pursuant to the provisions of Ordinance No. O-04-19 of the City, adopted and approved on March 16, 2004, the City has previously issued its Wastewater Revenue Improvement Bonds, Series 2004 (the "Series 2004 Bonds"), in the original principal amount of \$8,300,000; and

WHEREAS, pursuant to the provisions of Ordinance No. O-09-76 of the City, adopted and approved on July 14, 2009, the City has previously issued its Wastewater Revenue Improvement Bonds, Series 2009 (the "Series 2009 Bonds"), in the original principal amount of \$12,000,000; and

WHEREAS, pursuant to the provisions of Ordinance No. O-10-109 of the City, adopted and approved on October 12, 2010, the City has previously issued its Wastewater Revenue Improvement Bonds, Series 2010 (the "Series 2010 Bonds"), in the original principal amount of \$14,955,000; and

WHEREAS, in order to secure funds necessary to finance the acquisition, construction and equipping of additional betterments and improvements with respect to the Wastewater System, including primarily the acquisition, construction and equipping of a portion of the costs relating to the conveyance system and lift stations required in connection with the proposed Tupelo Bayou wastewater treatment plant (the "Plant"), and engineering and other expenses in connection therewith, but also including costs of acquiring, constructing and equipping the Plant itself (the "Project"), to fund a debt service reserve and to pay printing, legal, underwriting and other expenses incidental to the issuance of wastewater revenue bonds for such purposes, the City has now determined to issue its Wastewater Revenue Improvement Bonds, Series 2012A, in an aggregate principal amount of \$25,000,000 (the "Series 2012A Bonds"); and

WHEREAS, in order to secure additional funds necessary to finance the remaining costs of acquisition, construction and equipping of the proposed Tupelo Bayou wastewater treatment plant, the City has also determined to issue its Wastewater Revenue Improvement Bond, Subordinate Series 2012B, in an aggregate principal amount of not to exceed \$70,000,000 (the "Series 2012B Bond"); and

WHEREAS, the City has determined to issue and secure the Series 2012A Bonds, on a prior and senior basis to the security for its outstanding Series 1992 Bond and the proposed Series 2012B Bond, and on a parity basis with the security for its outstanding Series 2004 Bonds, Series 2009 Bonds and Series 2010 Bonds, pursuant to a Third Supplemental Trust Indenture (the "Third Supplemental Trust Indenture"), by and among the City, the Corporation and First Security Bank, as trustee (the "Trustee"), a form of which has been presented to and is before this meeting; and

WHEREAS, the City proposes to enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting, with Crews & Associates, Inc. and Stephens Inc., Little Rock, Arkansas (the "Underwriters"), providing for the sale of the Series 2012A Bonds; and

WHEREAS, an open public hearing on the question of the issuance of the Series 2012A Bonds and the Series 2012B Bond has been held before the City Council and Mayor of the City on March 27, 2012, following publication of notice of such public hearing in the *Log Cabin Democrat* on March 16, 2012.

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

Section 1. The City Council hereby finds and declares that the acquisition, construction and equipping of the Project is in the best interest of the City and the customers of the Wastewater System.

Section 2. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution of Arkansas and the Act, there is hereby authorized the issuance of bonds of the City to be designated as "Wastewater Revenue Improvement Bonds, Series 2012A" (the "Series 2012A Bonds"). The Series 2012A Bonds shall be issued in the original aggregate principal amount of Twenty Five Million Dollars (\$25,000,000), shall mature on the dates and in the amounts and shall bear interest as follow:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
October 1, 2015	\$ 450,000	2.000%	1.150%
October 1, 2016	785,000	2.000%	1.450%
October 1, 2017	800,000	2.000%	1.800%
October 1, 2018	815,000	3.000%	2.100%
October 1, 2019	840,000	3.000%	2.350%
October 1, 2020	865,000	3.000%	2.700%
October 1, 2021	890,000	3.000%	2.900%
October 1, 2022	915,000	3.000%	3.100%
October 1, 2023	945,000	3.000%	3.200%
October 1, 2024	975,000	3.250%	3.350%
October 1, 2025	1,005,000	4.000%	3.400%
October 1, 2026	1,045,000	4.000%	3.450%
October 1, 2027	1,085,000	4.000%	3.550%
October 1, 2028	1,130,000	4.000%	3.650%
October 1, 2029	1,175,000	4.000%	3.750%
October 1, 2030	1,220,000	4.000%	3.800%
October 1, 2031	1,270,000	4.000%	3.900%
October 1, 2032	1,320,000	4.000%	4.000%
October 1, 2037	7,470,000	4.200%	4.300%

The proceeds of the Series 2012A Bonds will be utilized to acquire, construct and equip the Project, to fund a debt service reserve and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2012A Bonds. The payment of the principal of and interest on the Series 2012A Bonds will be secured primarily by the net revenues of the Wastewater System and shall be secured on a secondary basis by surplus net revenues of the Electric System, all as provided in the Trust Indenture dated as of April 1, 2004, as previously supplemented by a First Supplemental Trust Indenture dated as of October 1, 2009, and a Second Supplemental Trust Indenture dated as of November 1, 2010, and as further supplemented and amended by a Third Supplemental Trust Indenture to be dated as of May 1, 2012 (as supplemented and amended, the Indenture"), by and among the City, the Corporation and the Trustee. Such security shall be granted on a parity basis with the security for the Series 2004 Bonds, the Series 2009 Bonds and the Series 2010 Bonds and on a prior and senior

basis to the security for the Series 1992 Bond and the Series 2012B Bond. The Series 2012A Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall be subject to redemption prior to maturity and may contain such other terms, covenants and conditions, all as set forth in the Indenture.

The Mayor is hereby authorized and directed to execute and deliver the Series 2012A Bonds in substantially the form thereof contained in the Third Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2012A Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2012A Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriters, and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Series 2012A Bonds in substantially the form contained in the Third Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2012A Bonds, their execution to constitute conclusive evidence of such approval.

Section 3. To prescribe the terms and conditions upon which the Series 2012A Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Third Supplemental Trust Indenture, by and among the City, the Corporation and the Trustee, and the City Clerk is hereby authorized and directed to execute and acknowledge the Third Supplemental Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Third Supplemental Trust Indenture to be accepted, executed and acknowledged by the Corporation and the Trustee. The Third Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Wastewater System net revenues and Electric System surplus net revenues to the Series 2012A Bonds and the terms of the Series 2012A Bonds. The Mayor is hereby authorized to confer with the Corporation, the Trustee, the Underwriters and Bond Counsel in order to complete the Third Supplemental Trust Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Third Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Third Supplemental Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Series 2012A Bonds. The previous distribution and use of the Preliminary Official Statement in connection with the offer and sales of the Series 2012A Bonds is hereby ratified. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City, the Corporation and the Underwriters, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Corporation, the Trustee, the Underwriters and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Series 2012A Bonds are to be sold to the Underwriters, the Mayor is hereby authorized and directed to execute, at the request of the Corporation, a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriters, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Corporation, the Underwriters and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the City, the Wastewater System and the Electric System in compliance with the provisions of Rule 15c2-12 of the U.S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and among the City, the Corporation and First Security Bank, as dissemination agent (the "Dissemination Agent"), and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Corporation and the Dissemination Agent.

The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Corporation, the Dissemination Agent, the Underwriters and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Series 2012A Bonds and to effect the execution and delivery of the Third Supplemental Trust Indenture, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Official Statement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Series 2012A Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 8. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Series 2012A Bonds.

Section 9. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 10. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 11. It is hereby found and determined that there is an urgent need to finance certain improvements and betterments to the Wastewater System in order to alleviate hardships to the residents of the City, and in order to do so on the most favorable terms, it is necessary to enter into the Bond Purchase Agreement as soon as possible. Therefore, an emergency is hereby declared to exist and this Ordinance, being necessary for the immediate preservation of the public health, safety and welfare, shall be in force and take effect immediately upon and after its passage.

ADOPTED AND APPROVED THIS 24th DAY OF APRIL, 2012.

Approved:



Mayor Tab Townsell

Attest:



**Michael O. Garrett
City Clerk/Treasurer**

(SEAL)