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RHONDA WHARTON

FAULKNER COUNTY CIRCUIT CLERK

Fees \$36.00

by

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LB

D.C.

City of Conway, Arkansas

Ordinance No. O-14-36

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO PROVIDE SHORT-TERM FINANCING UNDER AMENDMENT NO. 78 TO THE ARKANSAS CONSTITUTION FOR CERTAIN INFRASTRUCTURE IMPROVEMENTS TO THE CITY OF CONWAY STREET SYSTEM; PROVIDING FOR PAYMENT OF THE PRINCIPAL AND THE INTEREST ON THE NOTE; APPROPRIATING FUNDS FROM GENERAL REVENUES; REIMBURSING THE CITY'S "PAY AS YOU GO FUNDS" FOR A PORTION OF PREVIOUS COSTS INCURRED FOR MAKING IMPROVEMENTS RELATED TO THE CONWAY LOOP SOUTH INTERCHANGE PROJECT; REPEALING ANY OTHER ORDINANCES IN CONFLICT HEREWITH; DECLARING AN EMERGENCY AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

Whereas, the City of Conway, Arkansas (the "City") is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") and Act No. 1808 of 2001 (codified as Arkansas Code Annotated § 14-78-101, *et seq.*, the "Act"), to incur short term financing obligations maturing over a period of, or having a term not to exceed five (5) years for the purpose of acquiring, constructing, installing and renting real property or tangible personal property having an expected useful life of more than one year; and

Whereas, it is proposed that the City issue its Promissory Note in the principal amount up to \$3,000,000 (the "Note") under Amendment No. 78 and the Act for the purpose of providing financing for all or a portion of the cost for certain infrastructure improvements and related engineering for the City of Conway, specifically improvements to Western Loop South Interchange (the "Project"); and

Whereas, the City has expended from its "Pay as You Go Funds," as authorized by award of the contract in that amount of \$2,324,679.82 for Structures and Grading for the Project to Thomco, Inc. (at its February 25, 2014 meeting) and approved approximately \$300,000 as payment to Garver Engineers for Construction Observation Services (at its March 11, 2014 meeting) for this Project and it is proposed that the City reimburse said "Pay as You Go Funds" a portion of the specific costs incurred for infrastructure improvements and engineering associated with this Project from the proceeds of this Note; and

Whereas, the City intends to arrange for the loan (the "Loan") from a financial institution (the "Lender") and to issue the Note to the Lender at a price of par in consideration for the Loan.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

Section 1: The City of Conway City Council (the "City Council") hereby finds that the Project is real or tangible personal property having a useful life of more than one year. The City Council further finds that the sum of the principal amount of the proposed Promissory Note and the outstanding principal amount of the City's other promissory notes issued under the authority of Amendment 78 do not exceed five percent (5%) of the assessed value of taxable property located within the City as determined by the last tax assessment completed before the issuance of the proposed Promissory Note.

Section 2: Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment No. 78 and the Act, the issuance of the Promissory Note in the principal amount of up to \$3,000,000 is hereby authorized for the purpose of financing a portion of the cost of the Project. The Note shall be dated the date of its issuance and shall bear interest on the outstanding principal amount at a fixed rate of 1.92% per annum (calculated on the basis of the actual number of days elapsed in a year of 365 days (366 days in a leap year). The Note shall be repaid within five years from the first

draw thereunder, and the Note shall commence to bear interest as of such date as contemplated by Arkansas Code Annotated § 14-78-102(4). The Note shall be issued in fully registered form.

Section 3: To the extent permitted by U. S. Treasury Regulation 1.150-2 (the "Regulation") the City may reimburse its "Pay as You Go Funds," a portion of the specific costs incurred for infrastructure improvements associated with this Project from the proceeds of the Note.

Section 4: First Security Bank has been selected by the Mayor, and approved by the City Council, based upon the commitment or proposal for the Loan that the Mayor has determined to have the lowest cost to the City after soliciting proposals or commitments for the Loan and receiving such proposals and commitments on April 3rd, 2014 from at least three financial institutions having offices in Faulkner County.

Section 5: It is expected that the first draw on the borrowings will occur on or about May 1, 2014 and the City will execute the Note immediately prior to such draw. Interest will begin to accrue on only the amount borrowed as of the date of each draw.

Section 6: As provided in Amendment No. 78, the debt service payments on the Note shall be charged against and paid from the general revenue of the City within five years, but not later than five (5) years from the date of the first draw on the Note when the obligation commences to bear interest, as contemplated by Arkansas Code Annotated § 14-78-102(4). For the purpose of making the annual debt service, there is hereby, and shall be, appropriated to pay the Note, an amount of general revenue of the City sufficient for such purposes. The City's Director of Finance is hereby authorized and directed to withdraw from the general revenues of the City the amounts at the times necessary to make the annual debt service payments on the Note. The source for such funds may be the pay as you go funding provided by the Quarter Cent Sales and Use Tax dedicated by action of the City Council to major street projects or any other source funded from general revenues of the City.

Section 7: The Mayor and City Clerk, for and on the behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance execution, and delivery of the Note, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Clerk are hereby further authorized and directed, for and on behalf of the City, and 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. The City covenants that it shall not take any action or suffer or permit any action to be taken or conditions to exist which causes or may cause the interest payable on the Note to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the Note will not be used directly or indirectly in such manner as to cause the Note to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Note is issued, a statement as required by Section 149(e) of the Code. The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of the proceeds of the Note, in such manner as to cause the Note to be "private activity bonds" within the meaning of Section 141 of the Code. The City covenants that it will take no action which would cause the Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Article shall prohibit investments in bonds issued by the United States Treasury.

Section 8: The adoption of this Ordinance is intended as the City's "official intent to reimburse itself from the proceeds of the Note for certain qualifying costs of the Project advanced by the City. The City covenants that it will not reimburse itself from proceeds of the Note for costs paid prior to the date the Note is issued except in compliance with U. S. Treasury Regulation 1.150-2 (the "Regulation").

Section 9: In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not be affect the remaining portions of this Ordinance, which shall remain in full force

and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

Section 10: All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

Section 11: Funds provided through the issuance of the Note are hereby appropriated and budgetary authority is provided for the Project in an amount up to \$3,000,000.

Section 12: Funds provided shall be appropriated from the Conway Loop South Interchange Project Improvements and Engineering – 2014 Loan Fund Loan Proceeds account (613.201.4370) into the Conway Loop South Interchange Project Improvements – 2014 Loan Fund CIP – Miscellaneous account (613.201.5990) as money borrowed and received for the Project in an amount of up to \$3,000,000.

Section 13: This ordinance is necessary for the protection of the public peace, health and safety and that in order to avoid project delays to this Project, it is essential to the ability of the City to efficiently conduct business and have the necessary funds to pay for this Project and therefore, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED on this 29th day of April, 2014.

Approved:



Mayor Tab Townsell

Attest:



Michael O. Garrett
City Clerk/Treasurer