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CRYSTAL TAYLOR

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BY: DIANA VARNER, D.C.

ORDINANCE

7 Pages

City of Conway, Arkansas

Ordinance No. O-19-84

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF (1) NOT TO EXCEED \$10,500,000 OF WASTEWATER REVENUE IMPROVEMENT BONDS, SERIES 2019A, AND (2) NOT TO EXCEED \$23,000,000 OF WASTEWATER REVENUE REFUNDING BONDS, TAXABLE SERIES 2019B, BY THE CITY OF CONWAY, ARKANSAS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SIXTH SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2019 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2019 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2019 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT 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 & 2017 Supp.) (as from time to time amended, the "Act") to issue and sell its wastewater revenue bonds for the purpose of financing and refinancing the cost of improvements to the Wastewater System; and

WHEREAS, pursuant to the provisions of Ordinance No. O-12-36 of the City, adopted and approved on April 24, 2012, the City has previously issued its Wastewater Revenue Improvement Bonds, Series 2012A (the "Series 2012A Bonds"), in the original principal amount of \$25,000,000; and

WHEREAS, in order to secure funds necessary to finance the acquisition, construction and equipping of additional betterments and improvements to the Wastewater System, including primarily the conversion of the Tucker Creek Wastewater Treatment Plant from an aeration facility to an equalization basis and various improvements related thereto, and the replacement and rehabilitation of segments of the wastewater treatment main serving central parts of the City, and engineering and other expenses in connection therewith (collectively, the "Project"), 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 2019A, in aggregate principal amount not to exceed \$10,500,000 (the "Series 2019A Bonds"); and

WHEREAS, an open public hearing on the question of the issuance of the Series 2019A Bonds and the financing of the Project has been held before the City Council and Mayor of the City on August 27, 2019, following publication of notice of such public hearing in the *Log Cabin Democrat* on August 16, 2019; and

WHEREAS, in order to secure funds necessary to refund the outstanding Series 2012A Bonds (and thereby achieve significant debt service savings) and to pay printing, legal, underwriting and other expenses incidental to the issuance of wastewater revenue bonds for such purposes, the City has also now determined to issue its Wastewater Revenue Refunding Bonds, Taxable Series 2019B, in the aggregate principal amount of \$23,000,000 (the "Series 2019B Bonds"); and

WHEREAS, the City has determined to issue and secure the Series 2019A Bonds and the Series 2019B Bonds on a prior and senior basis to the security for (i) its outstanding Wastewater Revenue Improvement Bond, Series 2015B (the "Series 2015B Bond"), and (ii) its outstanding Wastewater Revenue Refunding Bond, Series 2017 (the "Series 2017 Bond"), and on a parity basis with the security for (iii) its outstanding Wastewater Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds"), and (iv) its outstanding Wastewater Revenue Refunding Bonds, Series 2016 (the "Series 2016 Bonds"), pursuant to a Sixth Supplemental Trust Indenture (the "Sixth 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 Stephens Inc. and Crews & Associates, Inc., Little Rock, Arkansas (the "Underwriters"), providing for the sale of the Series 2019A Bonds and Series 2019B Bonds.

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 and the refunding of the Series 2012A Bonds are both in the best interest of the City and the customers of the Wastewater System. Accordingly, the funding of costs of the Project and the refunding of the Series 2012A Bonds are hereby authorized.

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 2019A" (the "Series 2019A Bonds"). The Series 2019A Bonds shall be issued in the original aggregate principal amount of not to exceed Ten Million Five Hundred Dollars (\$10,500,000), shall mature not later than October 1, 2039, and shall bear interest at the rates specified in the Bond Purchase Agreement. In no event shall the true interest cost relating to the Series 2019A Bonds exceed 4.000% per annum. The proceeds of the Series 2019A Bonds will be utilized to acquire, construct and equip the Project, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2019A Bonds.

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 also hereby authorized the issuance of bonds of the City to be designated as "Wastewater Revenue Refunding Bonds, Taxable Series 2019B" (the "Series 2019B Bonds"). The Series 2019B Bonds shall be issued in the original aggregate principal amount of not to exceed Twenty-Three Million Dollars (\$23,000,000), shall mature not later than October 1, 2037, and shall bear interest at the rates specified in the Bond Purchase Agreement. In no event shall the true interest cost relating to the Series 2019B Bonds exceed 4.000% per annum. The proceeds of the

Series 2019B Bonds will be utilized to refund the Series 2012A Bonds, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2019B Bonds.

The payment of the principal of and interest on the Series 2019A Bonds and the Series 2019B Bonds (collectively, the "Series 2019 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, by a Second Supplemental Trust Indenture dated as of November 1, 2010, by a Third Supplemental Trust Indenture dated as of May 1, 2012, by a Fourth Supplemental Trust Indenture dated as of August 1, 2014, by a Fifth Supplemental Trust Indenture dated as of January 1, 2016, and as further supplemented and amended by a Sixth Supplemental Trust Indenture to be dated as of October 1, 2019 (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 2014 Bonds and the Series 2016 Bonds and on a prior and senior basis to the security for the Series 2015B Bond and the Series 2017 Bond. The Series 2019 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 2019A Bonds and Series 2019B Bonds in substantially the forms thereof contained in the Sixth Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2019A Bonds and Series 2019B 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 2019A Bonds and Series 2019B 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 2019A Bonds and Series 2019B Bonds in substantially the forms contained in the Sixth Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2019A Bonds and Series 2019B Bonds, their execution to constitute conclusive evidence of such approval.

Section 3. To prescribe the terms and conditions upon which the Series 2019 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Sixth 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 Sixth 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 Sixth Supplemental Trust Indenture to be accepted, executed and acknowledged by the Corporation and the Trustee. The Sixth 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 2019 Bonds and the terms of the Series 2019 Bonds. The Mayor is hereby authorized to confer with the Corporation, the Trustee, the Underwriters and Bond Counsel in order to complete the Sixth Supplemental Trust Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Sixth Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Sixth 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 2019 Bonds. The Preliminary Official Statement is hereby “deemed final” within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. 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 2019 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 the defeasance and redemption of the Series 2012A Bonds, the Mayor is hereby authorized and directed to execute an Escrow Deposit Agreement to be dated as of the date of its execution (the “Escrow Agreement”), by and between the City and First Security Bank, as escrow trustee (the “Escrow Trustee”), and the Mayor is hereby authorized and directed to cause the Escrow Agreement to be executed by the Escrow Trustee. The Escrow 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 Escrow Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Escrow Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Escrow 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. 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 8. 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 2019 Bonds and to effect the execution and delivery of the Sixth Supplemental Trust Indenture, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Escrow Agreement, the Official Statement and a Tax Compliance Agreement relating to the tax exemption of interest on the Series 2019A 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 9. 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 2019 Bonds.

Section 10. The rates for services of the Wastewater System previously enacted pursuant to Ordinance No. O-92-15, Ordinance No. O-03-88, Ordinance O-09-48 and Ordinance No. O-12-14 are hereby ratified and confirmed. The rates for services of the Electric System previously enacted pursuant to Ordinance No. O-05-143 and Ordinance No. O-15-76 are hereby ratified and confirmed.

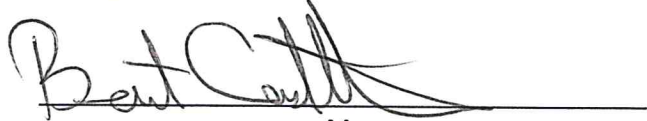
Section 11. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 12. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 13. It is hereby found and determined that there is an urgent need to finance certain betterments and improvements to the Wastewater System and to refinance certain outstanding indebtedness of the City secured by revenues of the Wastewater System, 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 27th DAY OF AUGUST, 2019.

APPROVED:

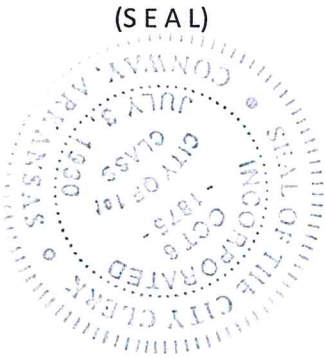


Mayor

ATTEST:



City Clerk



CERTIFICATE

**STATE OF ARKANSAS
COUNTY OF FAULKNER
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 27th day of August, 2019 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 30th day of August, 2019.



CITY CLERK-TREASURER

