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City of Conway

ORDINANCE NO. 0-08-121

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A GUARANTEED EFFICIENCY SAVINGS PERFORMANCE CONTRACT FOR THE PURPOSE OF ARRANGING FOR CERTAIN ENERGY SYSTEM UPGRADES AT CITY FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT HAVING A NOMINAL PRINCIPAL AMOUNT OF \$847,463 FOR THE PURPOSE OF FINANCING SAID ENERGY SYSTEM UPGRADES; AND PRESCRIBING OTHER MATTERS RELATING THERETO

D. C.

WHEREAS, the City Council of the City of Conway, Arkansas (the "City") has determined that there is a great need for a mechanism to finance the costs of acquisition and installation of certain energy system upgrades in various City-owned facilities (the "Improvements"), thereby achieving energy cost savings and benefitting the residents of the City; and

WHEREAS, in order to accomplish said Improvements, the City has made arrangements for the entry into a Guaranteed Efficiency Savings Performance Contract (the "Efficiency Savings Contract") with Energy Systems Group, LLC, an Indiana limited liability company (the "Contractor"), in substantially the form presented to and before this meeting; 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 to the Constitution of the State of Arkansas ("Amendment 65") and the Local Government Capital Improvement Revenue Bond Act of 1985, codified as Arkansas Code Annotated (1998 Repl. & Supp. 2005) Sections 14-164-401 *et seq.* (as from time to time amended, the "Act"), to enter into certain lease purchase arrangements to finance the costs of various capital improvements such as those comprising the Improvements, which lease obligations shall constitute special obligations of the City under Amendment 65 and the Act;

WHEREAS, in order to finance the acquisition and installation of the Improvements, the City has made arrangements for the entry into a Lease Purchase Agreement (the "Lease Purchase Agreement") with First Security Bank, an Arkansas banking corporation (the "Lessor"), in substantially the form presented to and before this meeting; and

WHEREAS, an open public hearing on the question of the financing of the Improvements was held before the City Council and the Mayor on September 23, 2008, following publication of notice thereof in *The Log Cabin Democrat* on September 13, 2008;

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

Section 1. Under the authority of the Act, and in order to arrange for the acquisition and installation of the Improvements, the Mayor is hereby authorized to execute the Efficiency Savings Contract, and the Mayor is hereby authorized to cause the Efficiency Savings Contract to be executed by the Contractor. The Efficiency Savings Contract is hereby approved in

substantially the form submitted to this meeting. The Mayor is hereby authorized to confer with the Contractor and Kutak Rock LLP (“Bond Counsel”), in order to complete the Efficiency Savings Contract in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Efficiency Savings Contract, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Efficiency Savings Contract 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 2. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 and the Act, and in order to finance the acquisition and installation of the Improvements, the Mayor is hereby authorized and directed to execute the Lease Purchase Agreement, and the City Clerk is hereby authorized and directed to execute the Lease Purchase Agreement and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Lease Purchase Agreement to be executed by the Lessor. The Lease Purchase Agreement is hereby approved in substantially the form submitted to this meeting. The Mayor is hereby authorized to confer with the Lessor and Bond Counsel in order to complete the Lease Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Lease Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Lease 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 3. The nominal principal amount of the Lease Purchase Agreement is \$847,463 in the aggregate and the effective interest rate relating to the City’s obligations under the Lease Purchase Agreement is 5.40%.

Section 4. It is affirmed that, pursuant to Amendment 65 and the Act, the payment obligations of the City under the Lease Purchase Agreement shall not constitute general obligations of the City, but shall be special obligations, secured by and payable from all receipts of municipal franchise fees heretofore or hereafter charged and collected by the City from private entities for the privilege of the use of City streets, alleys, easements and other City-owned property (the “Franchise Fees”). The pledge of Franchise Fees securing the City’s obligations under the Lease Purchase Agreement shall be junior and subordinate to the prior pledge of Franchise Fees securing the City’s outstanding Franchise Fee Revenue Improvement Bonds, Series 2006 (the “Prior Bonds”), and all bonds subsequently issued on a parity basis therewith in accordance with the terms of the Prior Bonds. The City covenants and agrees that collections of the Franchise Fees shall not be reduced or discontinued so long as the City’s obligations under the Lease Purchase Agreement remain outstanding and that all receipts of the Franchise Fees will be accounted for separately as special funds on the books of the City. The payment obligations shall additionally be secured by a security interest in the Improvements, as provided in the Lease Purchase Agreement.

Section 5. 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 execution and delivery of the Efficiency Savings Contract and the Lease Purchase Agreement, 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, including specifically an Escrow Agreement in substantially the form attached as Exhibit E to the Lease Purchase Agreement.

Section 6. The City's obligations under the Lease Purchase Agreement are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. The City hereby represents and covenants that the aggregate principal amount of its tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in calendar year 2008 will not exceed \$10,000,000.

Section 7. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the entry into the Lease Purchase Agreement.

Section 8. 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 9. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.


ADOPTED AND APPROVED THIS 14th DAY OF October, 2008.

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett
City Clerk/Treasurer

(S E A L)