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Doc#2009- 14224
Date 07/28/2009
04:12:34 PM
Filed & Recorded in
Official Records of
Faulkner County
RHONDA WHARTON
FAULKNER COUNTY CIRCUIT CLERK
Fees \$48.00
by LR D.C.

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City of Conway, Arkansas
Ordinance No. O-09-76

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$12,000,000 OF WASTEWATER REVENUE IMPROVEMENT BONDS, SERIES 2009, 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 FIRST SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2009 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2009 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2009 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

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 & 2005 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, 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 extension and rehabilitation of collection components of the Wastewater System (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 2009, in an aggregate principal amount of not to exceed \$12,000,000 (the "Series 2009 Bonds"); and

WHEREAS, the City has determined to issue and secure the Series 2009 Bonds, on a prior and senior basis to the security for its outstanding Series 1992 Bond, and on a parity basis with the security for its outstanding Series 2004 Bonds, pursuant to a First Supplemental Trust Indenture (the "First 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 2009 Bonds; and

WHEREAS, an open public hearing on the question of the issuance of the Series 2009 Bonds has been held before the City Council and Mayor of the City on July 14, 2009, following publication of notice of such public hearing in the *Log Cabin Democrat* on June 28, 2009.

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 2009" (the "Series 2009 Bonds"). The Series 2009 Bonds shall be issued in the original aggregate principal amount of not to exceed Twelve Million Dollars (\$12,000,000), shall mature not later than April 1, 2039, and shall bear interest at the rates specified in the Bond Purchase Agreement. In no event shall the interest rate borne by any Series 2009 Bond exceed 5.50% per annum and in no event shall the average interest rate on the Series 2009 Bonds exceed 5.50%. The proceeds of the Series 2009 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 2009 Bonds. The payment of the principal of and interest on the Series 2009 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 supplemented and amended by the First Supplemental Trust Indenture (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 and on a prior and senior basis to the security for the Series 1992 Bond. The Series 2009 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, 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 2009 Bonds in substantially the form thereof contained in the First Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2009 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 2009 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 2009 Bonds in substantially the form contained in the First Supplemental Trust Indenture submitted to this meeting, with such changes as

shall be approved by such persons executing the Series 2009 Bonds, their execution to constitute conclusive evidence of such approval.

Section 3. To prescribe the terms and conditions upon which the Series 2009 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the First 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 First 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 First Supplemental Trust Indenture to be accepted, executed and acknowledged by the Corporation and the Trustee. The First 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 2009 Bonds and the terms of the Series 2009 Bonds. The Mayor is hereby authorized to confer with the Corporation, the Trustee, the Underwriters and Bond Counsel in order to complete the First Supplemental Trust Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the First Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the First 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 2009 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 2009 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 the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Corporation and the Trustee. 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 Trustee, 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 2009 Bonds and to effect the execution and delivery of the First 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 2009 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 2009 Bonds.

Section 9. The rates for services of the Wastewater System previously enacted pursuant to Ordinance No. O-92-15, as amended by Ordinance No. O-03-88 and Ordinance No. O-09-48, are hereby ratified and confirmed.

Section 10. The Series 2009 Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (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), including those of its subordinate entities, issued in calendar year 2009 will not exceed \$30,000,000.

Section 11. The adoption of this Ordinance is intended as the City's "official intent" to reimburse itself or the Corporation from the proceeds of the Series 2009 Bonds for preliminary costs of the Project and related expenses advanced by the City or the Corporation.

Section 12. 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 13. 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 July, 2009.

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett, City Clerk

(SEAL)