

City Copy

ORDINANCE NO. A-539

AN ORDINANCE AUTHORIZING AN AGREEMENT BY AND BETWEEN THE CITY OF CONWAY, ARKANSAS AND THE DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY PURSUANT TO THE PROVISIONS OF ACT NO. 108 OF THE ACTS OF ARKANSAS OF 1971, AS AMENDED; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the City Council of the City of Conway, Arkansas

Section 4. That pursuant to the provisions of Section 18 of Act No. 108 of the Acts of Arkansas of 1971, as amended, the Mayor and City Clerk bc, and they are hereby, authorized and directed to enter into an Agreement with the Department of Pollution Control and Ecology (of the State of Arkansas), with the form and contents of the Agreement which is made a part hereof being a s follows:

AGREEMENT

This AGREEMENT entered into this _____ day of _____, 1972, by and between the City of Conway, Arkansas, a city of the first class under the laws of the State of Arkansas (the "City") and the Department of Pollution Control and Ecology (of the State of Arkansas), an agency organized under and existing pursuant to the laws of the State of Arkansas (the "Department");

WITNESSETH:

WHEREAS, the City proposes to construct and equip extensions, betterments and improvements (the "improvements") to the Sewer System of the City (the "System"), which improvements include a water pollution control project, a portion of which is eligible for federal assistance under the provisions of 33 U.S.C.A. § 1151 et seq. (the eligible portion being herein called the "Project"), as defined in Act No. 108 of 1971, as amended ("Act No. 108"); and

WHEREAS, the total estimated costs of accomplishing the Project amount to \$27,350.24, a portion of which will be provided by federal assistance, a portion will be provided by a State Grant from the Department and the remaining portion will be provided by the City from available funds; and

WHEREAS, the City has applied to the Department for a grant in the amount of \$7,600 (the "State Grant"), which will be funded by Department Bonds (hereinafter identified); and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions pertaining to the accomplishment of the Project, to the State Grant and to the sale and issuance of the Department Bonds and other matters incidental thereto.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein set forth and other good and valuable considerations, receipt of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. (a) The Department hereby accepts the application of the City for the State Grant and, subject to the provisions of Act No. 108 and compliance by the City with the provisions thereof and of this Agreement, agrees to sell and issue revenue bonds under Act No. 108 (the "Department Bonds") in an aggregate principal amount sufficient to fund the State Grant.

(b) The Department Bonds, as provided in Act No. 108, shall be authorized by resolution of the Department (the "authorizing resolution"), duly adopted. The authorizing resolution shall set forth the details of the Department Bonds, the nature and extent of the security for the Department Bonds and the rights and obligations of the Department, the trustee for the holders of the Department Bonds (which shall be named in the authorizing resolution) and the holders of the Department Bonds. As requested by the City by Resolution adopted and approved on the 8 day of February, 1972 (a certified copy of which is attached hereto as Exhibit A) the Department Bonds shall be sold and issued to Womeldorff & Lindsey, Little Rock, Arkansas, at a price of par and accrued interest for bonds bearing interest at the rate of 4-1/2% per annum, subject to the approval of the Department as set forth in the authorizing resolution.

(c) The Department Bonds shall be secured by a pledge of and shall be payable solely from revenues derived from the operation of the System. The pledge of revenues to the Department Bonds shall be subordinate to the pledge of revenues to an issue of Sewer Revenue Bonds, Series 1967, dated February 1, 1967 (the "City Bonds").

Section 2. The City has, by Ordinance No. 538, adopted and approved on the 8 day of February, 1972, levied a Water Quality Control Charge upon users of the System (a certified copy of which is attached hereto as Exhibit B). The City covenants to maintain the Water Quality Control Charge at such level that it will produce in each year revenues at least equal to 125% of the maximum annual debt service requirements (principal and interest) of the Department Bonds, and the City covenants to increase the Water Quality Control Charge from time to time as and if necessary to produce revenues in such amounts. The Water Quality Control Charge shall be levied and collected at the same time and in the same manner as other fees and charges levied and collected for the services and facilities of the System. So long as any of the Department Bonds are outstanding, all revenues derived from the Water Quality Control Charge shall be paid over to the Department on or before the first business day of each month. Payment of the revenues derived from the Water Quality Control Charge shall be made to the Department by making payment directly to the Paying Agent of the Department Bonds for deposit in the Bond Fund.

~~Section 3.~~ All revenues derived from the Water Quality Control Charge in excess of the amount necessary to provide for the payment of the principal of, interest on and paying agent's fees in connection with the Department Bonds shall be remitted by the Department to the City from time to time for deposit in the Sewer Fund of the City being maintained pursuant to the provisions of the Authorizing Ordinance of the City Bonds. The Department shall include the substance of this Section 3 in the authorizing resolution.

Section 4. All covenants of the City to the holders of the City Bonds set forth in Ordinance No. A-447, adopted and approved on the 28th day of February, 1967 (the "Authorizing Ordinance" of the City Bonds, a copy of which is attached hereto as Exhibit C), including, without limitation, those pertaining to the continued operation of the System as a revenue producing undertaking, those pertaining to the levy and collection of charges, those pertaining to the handling and disposition of revenues derived from the operation of the System and those pertaining to the issuance of additional bonds (as set forth in detail in the Authorizing Ordinance of the City Bonds), shall be extended to and shall inure to the benefit and protection of the Department and the holders of the Department Bonds; provided, however, the pledge of revenues to the Department Bonds is subordinate to the pledge of revenues to the City Bonds, the pledge in favor of the Department Bonds may be specifically enforced by the Department, and/or by the Trustee for the holders of the Department Bonds.

Section 5. All contracts for construction of the Project, or any portion thereof, must be approved by the Department prior to their execution by the City.

Section 6. The provisions of Act No. 108 and the Rules and Regulations of the Department in implementation thereof are incorporated herein by this reference and are hereby made a part of this Agreement.

Section 7. The provisions of this Agreement are hereby declared to be severable. If any provision hereof shall be held to be invalid, such holding shall not affect the remainder hereof.

WHEREFORE, the parties have hereunto set their hands and seals
as of the date hereinabove first written.

ATTEST:

Loris Dumm
City Clerk

(SEAL)

CITY OF CONWAY, ARKANSAS

By *Walter Dinnaway*
Mayor

ATTEST:

Director

(SEAL)

DEPARTMENT OF POLLUTION CONTROL
AND ECOLOGY

By _____
Chairman, Commission on
Pollution Control and Ecology

Section 2. That the Mayor and City Clerk be, and they are hereby, authorized to execute and deliver for and on behalf of the City the Agreement and to take all action necessary to perform all obligations and realize all rights of the City set forth therein.

Section 3. It is hereby ascertained and declared that State Grant funds as provided for in the Agreement are immediately necessary in connection with the financing of improvements to the Sewer System of the City in order to preserve the health and welfare of the inhabitants of the City, that the execution and delivery of the Agreement is a prerequisite to the obtaining of the State Grant funds, and it is, therefore, declared that an emergency exists requiring this Ordinance to take effect and be in force from and after its adoption for the preservation of the public peace, health and safety, and it is so ordained.

ADOPTED: February 8 1972.

ATTEST:

Doris Dunn
City Clerk

APPROVED:

Walter Penaway
Mayor

(SEAL)