

ORDINANCE NO. 19-814

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$9,250,000 OF UTILITY REVENUE IMPROVEMENT BONDS, SERIES 2019, BY THE CITY OF CLARKSVILLE, ARKANSAS FOR THE PURPOSE OF FINANCING THE COST OF CERTAIN CAPITAL IMPROVEMENTS BENEFITTING THE CITY'S ELECTRIC, WATER AND FIBER OPTIC COMMUNICATIONS SYSTEMS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Clarksville, Arkansas (the "City"), a city of the first class, presently owns an electric distribution system (the "Electric System"), a water treatment and distribution system (the "Water System"), a wastewater collection and treatment system (the "Wastewater System"), and a fiber optics communications system (the "Communications System"), each system serving the residents of the City, which Electric System, Water System, Wastewater System and Communications System are operated and maintained on behalf of the City by its component unit, the Clarksville Light and Water Company ("CLW"); and

WHEREAS, the City is authorized under the provisions of Amendment 65 to the Constitution of the State of Arkansas and Arkansas Code Annotated §§14-164-401 *et seq.* and §§14-203-101 *et seq.* (collectively, the "Authorizing Legislation") to issue and sell its utility revenue bonds for the purpose of financing the cost of improvements to the Electric System, the Water System, the Wastewater System and the Communications System; and

WHEREAS, the Board of Commissioners of CLW has adopted a resolution recommending that the City finance certain betterments and improvements to the Electric System, the Water System and the Communications System through the issuance of its utility revenue bonds; and

WHEREAS, in order to secure funds necessary to finance certain betterments and improvements to the Electric System, the Water System and the Communications System consisting of (i) the acquisition and installation of upgrades to CLW's existing electric distribution smart grid system (the "Electric Project"), (ii) the acquisition and installation of ozone generator replacement units at CLW's water treatment plant (the "Water Project"), and (iii) the expansion of CLW's existing fiber optic communications network to provide service throughout the City (the "Communications Project," and together with the Electric Project and the Water Project, the "2019 Project"), and to pay printing, legal, underwriting and other expenses incidental to the issuance of revenue bonds for such purposes, the City has now

determined to issue its Utility Revenue Improvement Bonds, Series 2019, in the aggregate principal amount of not to exceed \$9,250,000 (the "Series 2019 Bonds"); and

WHEREAS, the City has determined to issue and secure the Series 2019 Bonds pursuant to a Trust Indenture (the "2019 Indenture"), by and between the City and The Citizens Bank, Batesville, Arkansas, as trustee (the "2019 Trustee"), in substantially the form presented to and 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., Little Rock, Arkansas (the "Underwriter"), providing for the sale of the Series 2019 Bonds; and

WHEREAS, an open public hearing on the questions of the issuance of the Series 2019 Bonds and the financing of the 2019 Project has been held before the City Council and Mayor of the City on April 8, 2019, following publication of notice of such public hearing in *The Johnson County Graphic* on March 27, 2019;.

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

Section 1. The City Council hereby finds and declares that the accomplishment of the 2019 Project is in the best interest of the City and the customers of the Electric System, the Water System and the Communications System, and that the period of usefulness of the improvements constituting the 2019 Project is more than fifteen (15) years, which is longer than the term of the Series 2019 Bonds. The 2019 Project shall be accomplished under the control and supervision of, and all details in connection therewith shall be handled by, the City. The City shall make all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers.

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 Authorizing Legislation, there is hereby authorized the issuance of bonds of the City to be designated as "Utility Revenue Improvement Bonds, Series 2019" (the "Series 2019 Bonds"). The Series 2019 Bonds shall be issued in the original aggregate principal amount of not to exceed Nine Million Two Hundred and Fifty Thousand Dollars (\$9,250,000), and shall mature not later than June 1, 2036, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement. In no event shall the true interest cost relating to the Series 2019 Bonds exceed 3.25% per annum.

The proceeds of the Series 2019 Bonds will be utilized to acquire, construct, equip and install the 2019 Project and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2019 Bonds. The Series 2019 Bonds shall not be general obligations of the City, but shall be special obligations secured by and payable solely from revenues of the Electric System, the Water System, the Wastewater System and the Communications System, as provided in the 2019 Indenture. With respect to the revenues of the Electric System, the Water System and the Wastewater System, such pledge in favor of the Series 2019 Bonds shall be made

on a parity basis with the existing pledge of such revenues securing the City's outstanding Utility Revenue Construction Bonds, Series 2013 (the "Series 2013 Bonds"). The Series 2013 Bonds are issued and secured under the terms and provisions of a Trust Indenture dated June 25, 2013 (the "2013 Indenture"), by and between the City and The Citizens Bank, Batesville, Arkansas, as trustee (the "2013 Trustee"). The City hereby covenants not to issue any further bonded indebtedness under the terms and provisions of the 2013 Indenture.

The Series 2019 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 2019 Indenture.

The Mayor is hereby authorized and directed to execute and deliver the Series 2019 Bonds in substantially the form thereof contained in the 2019 Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2019 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 2019 Bonds to be accepted and authenticated by the 2019 Trustee. The Mayor is hereby authorized to confer with CLW representatives, the 2019 Trustee, the Underwriter, and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Series 2019 Bonds in substantially the form contained in the 2019 Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2019 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 2019 Indenture, by and between the City and the 2019 Trustee, and the City Clerk is hereby authorized and directed to execute and acknowledge the 2019 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 2019 Indenture to be accepted, executed and acknowledged by the 2019 Trustee. The 2019 Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of the revenues of the Electric System, the Water System, the Wastewater System and the Communications System to the Series 2019 Bonds and the terms of the Series 2019 Bonds. The Mayor is hereby authorized to confer with CLW representatives, the 2019 Trustee, the Underwriter and Bond Counsel in order to complete the 2019 Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the 2019 Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the 2019 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 and use of the Preliminary

Official Statement in connection with the offer and sale of the Series 2019 Bonds 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 Underwriter, 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 CLW representatives, the 2019 Trustee, the Underwriter 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 Underwriter, the Mayor is hereby authorized and directed to execute 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 Underwriter, 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 CLW representatives, the Underwriter 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 Electric System, the Water System, the Wastewater System and the Communications 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 between the City and The Citizens Bank, Batesville, Arkansas, 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 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 CLW representatives, the Dissemination Agent, the Underwriter 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 2019 Bonds and to effect the execution and delivery of the 2019 Indenture, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Official Statement and a Tax Compliance Agreement relating to the tax exemption of interest on the Series 2019 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 2019 Bonds.

Section 9. The City considers this Ordinance to be its declaration of official intent to issue the Series 2019 Bonds and to make reimbursement with a portion of the proceeds thereof for all original expenditures incurred in connection with the acquisition, construction, equipping and installation of the 2019 Project between the date that is sixty (60) days prior to the date of this Ordinance and the date the Series 2019 Bonds are issued for such purpose, plus a *de minimis* amount and preliminary expenditures, as such terms are defined in Section 1.150-2(f) of the Federal Income Tax Regulations.

Section 10. The City hereby declares its expectation and intention that bonds issued and to be issued by the City during calendar year 2019 will not in the aggregate exceed \$10,000,000 in principal amount, and the City hereby declares the Series 2019 Bonds to be "qualified tax-exempt obligations" within the meaning of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 11. The rates for services of the Electric System previously enacted pursuant to Ordinance No. 14-716 of the City are hereby ratified and confirmed. The rates for services of the Water System previously enacted pursuant to Ordinance No. 14-714 of the City are hereby ratified and confirmed. The rates for services of the Wastewater System previously enacted pursuant to Ordinance No. 14-715 of the City are hereby ratified and confirmed.

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.

Section 14. It is hereby found and determined that there is an urgent need to finance the various capital improvements comprising the 2019 Project in order to provide benefits and alleviate hardships to the residents of the City, 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 8th DAY OF APRIL, 2019.

APPROVED:

David Rieder
Mayor

ATTEST:

Barbara Stuker
City Clerk

