

**ORDINANCE NO. O-15-120**

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$3,425,000 OF FRANCHISE FEE REVENUE IMPROVEMENT BONDS, SERIES 2015, BY THE CITY OF CONWAY, ARKANSAS FOR THE PURPOSE OF FINANCING THE ACQUISITION AND INSTALLATION OF A COMMUNICATIONS SYSTEM; AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2015 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2015 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2015 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City Council of the City of Conway, Arkansas (the "City"), has determined that there is a critical need for a source of funds to finance the costs of acquiring and installing a Phase 2 trunked land mobile radio communications system and related improvements (the "Project"); 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.* (1998 Repl. & Supp. 2015) (as from time to time amended, the "Act") to issue and sell its revenue bonds for the purpose of financing "capital improvements" (as defined in the Act), such as those improvements comprising the Project; and

**WHEREAS**, pursuant to the authority of Amendment 65 and the Act, the City has previously issued its Franchise Fee Revenue Refunding Bonds, Series 2012 (the "Series 2012 Bonds"), presently outstanding in the aggregate principal amount of \$3,960,000, for the purpose of refunding prior bonds of the City issued to finance the costs of acquiring, constructing, extending and equipping certain improvements to the City's wastewater and electric systems and certain roadway infrastructure and related improvements within the City's Meadows Industrial Park or Guy Murphy Industrial Park; and

**WHEREAS**, in order to secure funds necessary to finance the costs of the Project, to establish a debt service reserve, and to pay printing, legal, underwriting and other expenses incidental to the issuance of revenue bonds for such purposes, the City has determined to issue its Franchise Fee Revenue Improvement Bonds, Series 2015, in aggregate principal amount not to exceed \$3,425,000 (the "Series 2015 Bonds"), such Series 2015 Bonds to be secured by and payable solely from municipal franchise fees charged and collected by the City; and

**WHEREAS**, the City has determined to issue and secure the Series 2015 Bonds pursuant to a Second Supplemental Trust Indenture (the "Second Supplemental Trust Indenture"), by and between the City and Centennial Bank, as trustee (the "Trustee"), a form of which has been presented to and is before this meeting; and

**WHEREAS**, the City has made arrangements for the sale of the Series 2015 Bonds to Crews & Associates, Inc. and Stephens Inc. (the "Underwriters"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriters (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting; and

**WHEREAS**, an open public hearing on the question of the issuance of the Series 2015 Bonds and the financing of the Project has been held before the City Council and Mayor of the City on October 27, 2015, following publication of notice of such public hearing in the *Log Cabin Democrat* on October 16, 2015.

**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 and installation of the Project is in the best interest of the City and its residents.

**Section 2.** Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution of the State of Arkansas and the Act, there is hereby authorized the issuance of bonds of the City to be designated as "Franchise Fee Revenue Improvement Bonds, Series 2015" (the "Series 2015 Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Three Million Four Hundred Twenty-Five Thousand Dollars (\$3,425,000), and shall mature not later than December 1, 2035, on the dates, 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 2015 Bonds exceed 4.00% per annum.

The proceeds of the Series 2015 Bonds will be utilized to acquire and install the improvements comprising the Project, to fund a debt service reserve, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2015 Bonds. The Series 2015 Bonds shall be considered to be Additional Bonds under that certain Trust Indenture dated as of December 1, 2006, as supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2012 (as supplemented and amended, the "Original Indenture"), pursuant to which the Series 2012 Bonds were issued and secured. The Series 2015 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 shall contain such other terms, covenants and conditions, all as set forth in the Second Supplemental Trust Indenture submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Series 2015 Bonds in substantially the form thereof contained in the Second Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2015 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 2015 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 2015 Bonds in substantially the form contained in the Second Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2015 Bonds, their execution to constitute conclusive evidence of such approval.

**Section 3.** In order to pay the principal of and interest on the Series 2015 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged 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 City covenants and agrees that collections of the Franchise Fees shall not be reduced or discontinued so long as the Series 2015 Bonds are outstanding and that all receipts of the Franchise Fees will be accounted for separately as special funds on the books of the City and will be deposited and used solely as provided in the Original Indenture, as supplemented and amended by the Second Supplemental Trust Indenture. The pledge of Franchise Fees securing the Series 2015 Bonds is made on a parity basis with the pledge of Franchise Fees securing the Series 2012 Bonds and any Additional Bonds (as defined in the Original Indenture) issued hereafter, and is prior and superior to existing pledges of the Franchise Fees securing (i) the City’s Franchise Fee Revenue Lease-Purchase Agreement, Series 2008, and (ii) the City’s Taxable Electric Franchise Fee Revenue Bonds (Hewlett-Packard Company Project), Series 2008, or any obligation subsequently issued to refund or refinance said subordinate indebtedness.

**Section 4.** To prescribe the terms and conditions upon which the Series 2015 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Second Supplemental Trust Indenture (the “Second Supplemental Trust Indenture”), and the City Clerk is hereby authorized and directed to execute and acknowledge the Second 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 Second Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Second 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 the Franchise Fees and the terms of the Series 2015 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriters and Bond Counsel in order to complete the Second Supplemental Trust Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Second Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Second 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 5.** 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 2015 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 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 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 6.** In order to prescribe the terms and conditions upon which the Series 2015 Bonds are to be sold to the Underwriters, 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 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 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 7.** In order to provide for continuing disclosure of certain financial and operating information with respect to the Franchise Fees and the City 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 Centennial 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 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 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 2015 Bonds and to effect the execution and delivery of the Second Supplemental Trust 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 2015 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.** The City considers this Ordinance to be its declaration of official intent to issue the Series 2015 Bonds and to make reimbursement with a portion of the proceeds thereof for all original expenditures incurred in connection with the acquisition and installation of the Project between the date that is sixty (60) days prior to the date of this Ordinance and the date the Series 2015 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 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 11.** All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.


**Section 12.** It is hereby found and determined that there is an urgent need to finance the capital improvements comprising the 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 27<sup>TH</sup> DAY OF OCTOBER, 2015.

Approved:

  
\_\_\_\_\_  
Mayor Tab Townsell

Attest:

  
\_\_\_\_\_  
Michael O. Garrett  
City Clerk/Treasurer

(S E A L)