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ORDINANCE NO. 0-06-14

*Qm*

D. C.

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$5,200,000 OF FRANCHISE FEE REVENUE IMPROVEMENT BONDS, SERIES 2006, BY THE CITY OF CONWAY, ARKANSAS FOR THE PURPOSE OF FINANCING THE COST OF CERTAIN WASTEWATER AND ELECTRIC SYSTEM IMPROVEMENTS AND CERTAIN ROADWAY INFRASTRUCTURE AND RELATED IMPROVEMENTS; 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 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, constructing, extending and equipping certain improvements to the City's wastewater and electric systems and certain roadway infrastructure and related improvements (collectively, the "Project"), all such improvements to be located within the City's Meadows Industrial Park or Guy Murphy Industrial Park; 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. 2005) (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**, 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 2006, in an aggregate principal amount not to exceed \$5,200,000 (the "Bonds"), such 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 Bonds pursuant to a Trust Indenture (the "Trust Indenture"), by and between the City and a bank or other financial institution to be named (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 Bonds; and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds has been held before the City Council and Mayor of the City on this date, following publication of notice of such public hearing in the *Log Cabin Democrat* on November 2, 2006.

**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, extension and equipping 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 2006” (the “Bonds”). The Bonds shall be issued in the original aggregate principal amount of not to exceed Five Million Two Hundred Thousand Dollars (\$5,200,000), shall mature not later than December 1, 2032, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement. In no event shall the interest rate borne by any Bond exceed 5.50% per annum and in no event shall the average interest rate on the Bonds exceed 5.20%. The proceeds of the Bonds will be utilized to acquire, construct, extend and equip the improvements comprising the Project, to establish a debt service reserve for the Bonds or to purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The 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 Trust Indenture submitted to this meeting.

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

**Section 3.** In order to pay the principal of and interest on the 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 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 Trust Indenture.

**Section 4.** To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture (the "Trust Indenture"), by and between the City and a bank or other financial institution possessing corporate trust powers and acceptable to the Mayor, and the City Clerk is hereby authorized and directed to execute and acknowledge the 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 Trust Indenture to be accepted, executed and acknowledged by the Trustee. The 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 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriters and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the 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 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 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 the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by 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 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 8.** In order to secure lower interest rates on the Bonds, the Underwriters have proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriters, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

**Section 9.** 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 Bonds and to effect the execution and delivery of the 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 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 10.** 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 Bonds.

**Section 11.** 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 12.** All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict, including particularly the provisions of Ordinance No. O-06-50 prescribing the use of certain Franchise Fees in a manner contrary to the use of such Franchise Fees prescribed herein.

**Section 13.** 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 14<sup>th</sup> DAY OF NOVEMBER, 2006.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

(SEAL)

