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ORDINANCE NO. O-05-163

AN ORDINANCE GRANTING TO THE CONWAY CORPORATION A FRANCHISE TO OPERATE AND MAINTAIN ELECTRIC PLANT FACILITIES WITHIN THE CITY OF CONWAY.

WHEREAS, Conway Corporation and the City of Conway, Arkansas wish to modernize and extend the franchise agreement for the electric facilities of the City;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

Section One. The following definitions apply unless the context specifically indicates otherwise:

- (a) City – shall be the City of Conway, Arkansas.
- (b) City Council – shall be the City Council of the City of Conway, Arkansas.
- (c) Corporation (Corp.) – shall be the Conway Corporation.

(d) “Electric Plant” shall include all property, equipment and apparatus of every kind and nature, whether now owned or hereafter acquired and whether owned totally or in part, by the City of Conway, Arkansas, and/or Conway Corporation, which is necessary and/or incidental to the supplying of electric service within the City of Conway, Arkansas, and elsewhere, including but not limited to generators and auxiliary equipment (whether owned in whole or in part), buildings, fixtures, substations, transmission and distribution pole lines, transformers, service wires and metering equipment.

(e) Electric Service – shall be the necessary power and energy delivered to a pre-determined metering point, and, in the case of street lighting, shall include operation and maintenance of fixtures.

(f) Force Majeure – shall mean any cause or causes beyond the control of Corporation, including, but not limited to, acts of God or the public enemy, failure of the Corporation’s facilities, flood, earthquake, storm, lightning, fire, epidemic, war, embargo, riot, civil disturbances, strikes, picketing, lockouts or other labor disputes or disturbances, sabotage, or restraint or prevention of performance by act of any Court, regulatory body

or defense agency, which by the exercise of due diligence and foresight the Corporation could not reasonably have been expected to avoid.

Section Two. There is hereby granted to the Conway Corporation, a corporation organized under order of the Circuit Court of Faulkner County, and under Certificate of Incorporation, issued by the Clerk of the Circuit Court of Faulkner County on the 7th day of May, 1929, the exclusive privilege of operating and maintaining an Electric Plant within or without the City of Conway, Arkansas for the purpose of supplying electric power and energy generated at its generating plants owned totally or in part by it or purchased by it from other sources for Electric Service to the City and to its inhabitants and to all persons and corporations doing business therein for a period beginning on January 1, 2006 and ending on December 31, 2036. It is expressly provided, however, that Conway Corporation may enter into contracts or agreements as provided in Section Six for the purchase by it of electric power or energy.

Section Three. Corporation is hereby granted the exclusive right, privilege and right of way to place, maintain, construct and operate Electric Plant facilities in, through, over and under all streets, alleys, avenues, sidewalks and public grounds of the City for the purpose of furnishing Electric Service, and is hereby granted the right of ingress and egress thereon for the purpose aforesaid during the term of this franchise, with the right to trim all trees in said streets, alleys, sidewalks and public grounds, that may come in contact with any Electric Plant facilities. The Corporation, its employees, agents and contractors will have the right of access to customers' premises at all reasonable times for the purpose of installing, reading, inspecting or repairing any meter or devices owned by the Corporation or for the purpose of removing its property.

Section Four. Corporation shall at all times during the term of this franchise keep in constant force and effect power purchase and/or exchange agreements, operate and maintain efficient and properly equipped electric generating plants owned totally or in part by it, together with a proper and sufficient distribution system to afford Electric Service to the inhabitants of the City and all persons, firms and corporations doing business therein, and for street lights in said City during the term of this franchise, and shall sufficiently and properly supply and maintain said Electric Service at all times

whether it be generated and produced by its electric generating plants or be purchased from other sources, unless prevented by Force Majeure.

Section Five. The City shall, from time to time, make, adopt and enforce any and all necessary ordinances to protect the Electric Plant and other property under the control of said Corporation and to protect Corporation in the sole and exclusive and unrestricted enjoyment of all privileges granted under this franchise.

Section Six. The City makes this assignment to Conway Corporation under authority of Act 764 of 1995 and Conway Corporation is deemed an instrumentality of the City for such purpose. The authority of the City to enter into contracts for the purchase of power and energy, generation and the supply, management and transmission of power and energy is hereby delegated to Conway Corporation. If such contracts or agreements require the signature of the Mayor and have been recommended by Conway Corporation then he is granted that authority.

Section Seven. Franchise payments. (a) Corporation shall, at all times during the term of this franchise, maintain in good condition all street lights now being maintained in the City, together with all equipment necessary therefore, and shall furnish all Electric Service necessary to keep said street lights burning at the proper time, free of any charge whatever to the City, and from time to time, as its gross income shall increase, Corporation shall install, equip, maintain and furnish Electric Service, free of charge, for all additional street lights that may be added by the Corporation

(b) In addition, Conway Corporation shall pay to the City of Conway a franchise fee equal to 2.5 % of the retail electric sales to all customers excluding City of Conway and Conway Corporation, provided however, that gross revenues shall not include (i) any tax, fee or assessment of any kind imposed by the City or any other governmental entity or (ii) net unrecovered bad debts. The City agrees that all amounts paid by the franchisee as a tax under Section 7 (b) may be added to the price of Electric Services and collected from the customers as an external cost. All amounts paid by franchisee may be separately stated on the customer's bills. The amount paid or contributed in Sections 7 (a) and (b) are the total franchise fee to be paid to the City by Conway Corporation.

Section Eight. The rates charged for Electric Service shall be set by Corporation subject to the approval of the City Council. Said rates shall provide adequate revenues to

cover the costs of operation and maintenance, debt service, plant expansion and necessary and reasonable surpluses and reserves.

Section Nine. If any portion of this Ordinance is held invalid, illegal or unenforceable, such determinations shall not impair the enforceability of the remaining terms and provisions herein.

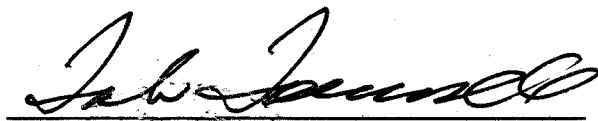
Section Ten. Ordinance 0-79-25 and 0-05-31 are hereby repealed and any other ordinance or parts of any ordinance in conflict with this ordinance are hereby repealed.

Section Eleven. The provisions of this franchise shall be accepted in writing by Corporation within 30 days after the passage and publication of this ordinance, whereupon said franchise shall be deemed to be in full force and effect.

Section Twelve. There is hereby found and declared to be an immediate need for the securing of Electric Service to the City and the inhabitants thereof for the period stated in Section Two hereof, and the granting of the franchise authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishment of this purpose. It is, therefore, declared that an emergency exists and this ordinance being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

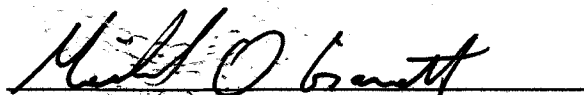
PASSED this 13th day of December, 2005.

APPROVED:



Mayor Tab Townsell

ATTEST: - - -



Michael O. Garrett, City Clerk-Treasurer

CERTIFICATE

**STATE OF ARKANSAS
COUNTY OF FAULKNER
CITY OF CONWAY**

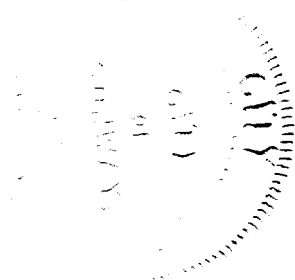
I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 13th day of December 2005, same is duly recorded in the minutes of meeting of said Council.

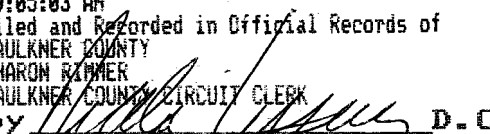
Witness, my hand and seal of the City of Conway, Arkansas, this 19th day of December 2005.



CITY CLERK-TREASURER

Seal



CERTIFICATE OF RECORD
Doc#2006- 228
01/04/2006
09:05:03 AM
Filed and Recorded in Official Records of
FAULKNER COUNTY
SHARON BANNER
FAULKNER COUNTY CIRCUIT CLERK
by  D.C.