

**ORDINANCE NO. O-15-119**

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$610,000 OF TAXABLE ELECTRIC FRANCHISE FEE REVENUE REFUNDING BONDS (HEWLETT-PACKARD COMPANY PROJECT), SERIES 2015, BY THE CITY OF CONWAY, ARKANSAS FOR THE PURPOSE OF REFUNDING THE CITY'S TAXABLE ELECTRIC FRANCHISE FEE REVENUE BONDS, SERIES 2008; 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 A BOND PURCHASE AGREEMENT OR AGREEMENTS PROVIDING FOR THE SALE OF THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City Council of the City of Conway, Arkansas (the "City"), previously determined that there was a critical need for a source of funds to finance the costs of certain roadway, ingress, egress, parking and other site improvements (collectively, the "Project") in connection with the construction of certain industrial facilities to be owned by the City and located at 355 LedgeLawn Drive within the City's Meadows Office & Technology Park, to be leased by the City to Conway Development Corporation, an Arkansas nonprofit corporation (the "CDC"), and to be subleased by CDC to Hewlett-Packard Company, a Delaware corporation ("HP"); 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 14-164-201 *et seq.* (1998 Repl. & Supp. 2015) (as from time to time amended, the "Act"), to own, acquire, construct, reconstruct, improve, equip and lease facilities, such as those improvements constituting the Project, in order to secure and develop industry and to assist in the financing and refinancing thereof by the issuance of bonds secured by surplus electric revenues; and

**WHEREAS**, in order to accomplish the Project, the City has previously issued its Taxable Electric Franchise Fee Revenue Bonds (Hewlett-Packard Company Project), Series 2008 (the "Series 2008 Bonds"), currently outstanding in the aggregate principal amount of \$610,000; and

**WHEREAS**, in order to secure funds necessary to refund the Series 2008 Bonds and to pay printing, legal and other expenses incidental to the issuance of revenue bonds for such purposes, the City has determined to issue its Taxable Electric Franchise Fee Revenue Refunding Bonds (Hewlett-Packard Company Project), Series 2015, in aggregate principal amount not to exceed \$610,000 (the "Series 2015 Bonds"), such Series 2015 Bonds to be secured by and payable solely from the municipal franchise fee charged and collected by the City with respect to the electric system serving the residents of the City and operated by the Conway Corporation; and

**WHEREAS**, the City has determined to issue and secure the Series 2015 Bonds pursuant to a Trust Indenture (the "Trust Indenture"), by and between the City and First Security Bank, an

Arkansas banking corporation (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 or Agreements (the "Bond Purchase Agreements") in substantially the form presented to and before this meeting, with First Security Bank, Centennial Bank or other "qualified institutional buyers" or other "accredited investors" (as such terms are defined in Rule 144A and Rule 501 of Regulation D of the U.S. Securities and Exchange Commission (the "Purchasers")), providing for the sale of the Series 2015 Bonds;

**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 refunding of the Series 2008 Bonds 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 "Taxable Electric Franchise Fee Revenue Refunding Bonds (Hewlett-Packard Company Project), Series 2015" (the "Series 2015 Bonds").

The Series 2015 Bonds shall be issued in the original aggregate principal amount of not to exceed Six Hundred Ten Thousand Dollars (\$610,000), and shall mature not later than June 1, 2020, on the dates, in the principal amounts and bearing interest at the rates specified in the Trust Indenture. In no event shall the true interest cost relating to the Series 2015 Bonds exceed 3.95% per annum.

The proceeds of the Series 2015 Bonds will be utilized to redeem the outstanding Series 2008 Bonds and to pay printing, legal and other expenses incidental to the issuance of the Series 2015 Bonds. 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 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 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, Crews & Associates, Inc. (the "Placement Agent") and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Series 2015 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 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 the municipal franchise fee heretofore or hereafter charged and collected by the City for the privilege of the use of City streets, alleys, easements and other City-owned property in connection with the operation of the electric system serving the residents of the City (the "Electric Franchise Fee"). The City covenants and agrees that collections of the Electric Franchise Fee shall not be reduced or discontinued so long as the Bonds are outstanding and that all receipts of the Electric Franchise Fee will be accounted for separately as a special fund on the books of the City and will be deposited and used solely as provided in the Trust Indenture, subject, however, to the prior and senior pledge of such Electric Franchise Fee securing (i) the City's Franchise Fee Revenue Refunding Bonds, Series 2012, the City's Franchise Fee Revenue Improvement Bonds, Series 2015, and any additional bonds subsequently issued and secured on a parity basis therewith in accordance with the terms thereof, and (ii) the City's obligations with respect to that certain Lease Purchase Agreement dated as of November 17, 2008, by and between the City and First Security Bank, Conway, Arkansas.

**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 a Trust Indenture (the "Trust Indenture"), by and between the City and First Security Bank, Searcy, Arkansas, as trustee (the "Trustee"), 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 Electric Franchise Fee and the terms of the Series 2015 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Placement Agent 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.** In order to prescribe the terms and conditions upon which the Series 2015 Bonds are to be sold to the Purchasers, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement or Agreements on behalf of the City, to be dated as of the date of their execution (the "Bond Purchase Agreements"), by and between the City and the Purchasers, and the Bond Purchase Agreements are hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Placement Agent and Bond Counsel in order to complete the Bond Purchase Agreements in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Bond Purchase Agreements, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of a 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.** 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 Trust Indenture and the Bond Purchase Agreements, 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 7.** 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 2015 Bonds.

**Section 8.** Crews & Associates, Inc. is hereby appointed to act as Placement Agent in connection with the issuance and sale of the Series 2015 Bonds.

**Section 9.** 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 10.** All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 11.** It is hereby found and determined that there is an urgent need to refinance certain outstanding indebtedness of the City secured by the Electric Franchise Fee in order to lower the interest cost on said obligations, and in order to do so on the most favorable terms, it is necessary to enter into the Bond Purchase Agreements 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:



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Michael O. Garrett  
City Clerk/Treasurer

(S E A L)