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ORDINANCE NO. O-15-135 By \_\_\_\_\_ D. C.

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$12,415,000 OF WASTEWATER REVENUE REFUNDING BONDS, SERIES 2016, BY THE CITY OF CONWAY, ARKANSAS FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING WASTEWATER REVENUE IMPROVEMENT BONDS, SERIES 2010; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIFTH SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2016 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2016 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2016 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT PROVIDING FOR THE PAYMENT OF THE SERIES 2010 BONDS TO BE REFUNDED; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Conway, Arkansas (the "City"), a city of the first class, presently owns a wastewater collection and treatment system (the "Wastewater System") serving the residents of the City, which Wastewater System is operated and maintained by the Conway Corporation, a nonprofit corporation organized and existing under the laws of the State of Arkansas (the "Corporation"), pursuant to an exclusive franchise to operate the Wastewater System granted to the Corporation by the City; and

**WHEREAS**, the City also presently owns an electric generation and distribution system (the "Electric System") serving the residents of the City, which Electric System is operated and maintained by the Corporation pursuant to a lease from the City and an exclusive franchise to operate the Electric System granted to the Corporation by the City; 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.* (Repl. 1998 & 2015 Supp.) (as from time to time amended, the "Act") to issue and sell its wastewater revenue bonds for the purpose of financing and refinancing the cost of improvements to the Wastewater System; and

**WHEREAS**, pursuant to the provisions of Ordinance No. O-10-109 of the City, adopted and approved on October 12, 2010, the City has previously issued its Wastewater Revenue Improvement Bonds, Series 2010 (the "Series 2010 Bonds"), in the original principal amount of \$14,955,000; and

**WHEREAS**, pursuant to the provisions of Ordinance No. O-12-36 of the City, adopted and approved on April 24, 2012, the City has previously issued its Wastewater Revenue Improvement Bonds, Series 2012A (the “Series 2012A Bonds”), in the original principal amount of \$25,000,000; and

**WHEREAS**, pursuant to the provisions of Ordinance No. O-14-61 of the City, adopted and approved on July 8, 2014, the City has previously issued its Wastewater Revenue Refunding Bonds, Series 2014 (the “Series 2014 Bonds”), in the original principal amount of \$9,980,000; and

**WHEREAS**, pursuant to the provisions of Ordinance No. O-15-42 of the City, adopted and approved April 14, 2015, the City has previously issued its Wastewater Revenue Refunding Bond, Subordinate Series 2015A (the “Series 2015A Bond”), in the original principal amount of \$65,004,588; and

**WHEREAS**, pursuant to the provisions of Ordinance No. O-15-43 of the City, adopted and approved April 14, 2015, the City has previously issued its Wastewater Revenue Improvement Bond, Subordinate Series 2015B (the “Series 2015B Bond”), in the original principal amount of not to exceed \$10,000,000; and

**WHEREAS**, in order to secure funds necessary to refund the Series 2010 Bonds and to pay printing, legal, underwriting and other expenses incidental to the issuance of wastewater revenue bonds for such purposes, the City has now determined to issue its Wastewater Revenue Refunding Bonds, Series 2016, in the aggregate principal amount of \$12,415,000 (the “Series 2016 Bonds”); and

**WHEREAS**, the City has determined to issue and secure the Series 2016 Bonds, on a prior and senior basis to the security for its outstanding Series 2015A Bond and Series 2015B Bond, and on a parity basis with the security for its outstanding Series 2012A Bonds and Series 2014 Bonds, pursuant to a Fifth Supplemental Trust Indenture (the “Fifth Supplemental Trust Indenture”) by and among the City, the Corporation and First Security Bank, as trustee (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 Series 2016 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 2010 Bonds is in the best interest of the City and the customers of the Wastewater System due to a reduction in the amount of interest expense secured by revenues of the Wastewater System following such refunding. Accordingly, the refunding of the Series 2010 Bonds is hereby authorized.

**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 Act, there is hereby authorized the issuance of bonds of the City to be designated as “Wastewater Revenue Refunding Bonds, Series 2016” (the “Series 2016 Bonds”). The Series 2016 Bonds shall be issued in the original aggregate principal amount of Twelve Million Four Hundred Fifteen Thousand Dollars (\$12,415,000), shall mature (or be subject to mandatory sinking fund redemption) on the dates and shall bear interest as follows:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
October 1, 2019	\$365,000	2.000%	1.370%
October 1, 2020	390,000	2.000%	1.590%
October 1, 2021	395,000	3.000%	1.810%
October 1, 2022	405,000	4.000%	2.040%
October 1, 2023	425,000	4.000%	2.250%
October 1, 2024	435,000	3.000%	2.420%**
October 1, 2025	455,000	3.000%	2.540%**
October 1, 2026	465,000*	4.000%	3.150%**
October 1, 2027	480,000*	4.000%	3.150%**
October 1, 2028	500,000*	4.000%	3.150%**
October 1, 2029	520,000*	4.000%	3.150%**
October 1, 2030	540,000	4.000%	3.150%**
October 1, 2031	565,000*	5.000%	3.250%**
October 1, 2032	595,000*	5.000%	3.250%**
October 1, 2033	625,000*	5.000%	3.250%**
October 1, 2034	655,000*	5.000%	3.250%**
October 1, 2035	690,000	5.000%	3.250%**
October 1, 2036	725,000*	3.875%	3.938%
October 1, 2037	750,000*	3.875%	3.938%
October 1, 2038	780,000*	3.875%	3.938%
October 1, 2039	810,000*	3.875%	3.938%
October 1, 2040	845,000	3.875%	3.938%

\* Mandatory sinking fund redemption

\*\* Priced to the first optional redemption date of April 1, 2024.

The proceeds of the Series 2016 Bonds will be utilized to refund the Series 2010 Bonds and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2016 Bonds. The payment of the principal of and interest on the Series 2016 Bonds will be secured primarily by the net revenues of the Wastewater System and shall be secured on a secondary basis by surplus net revenues of the Electric System, all as provided in the Trust Indenture dated as of April 1, 2004, as previously supplemented by a First Supplemental Trust Indenture dated as of October 1, 2009, by a Second Supplemental Trust Indenture dated as of November 1, 2010, by a Third Supplemental Trust Indenture dated as of May 1, 2012, by a Fourth Supplemental Trust Indenture dated as of August 1, 2014, and as further supplemented and amended by a Fifth Supplemental Trust Indenture to be dated as of January 1, 2016 (as supplemented and amended, the Indenture”), by and among the City, the Corporation and the Trustee. Such security shall be granted on a parity basis with the security for the Series 2012A

Bonds and the Series 2014 Bonds and on a prior and senior basis to the security for the Series 2015A Bond and the Series 2015B Bond. The Series 2016 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall be subject to redemption prior to maturity and may contain such other terms, covenants and conditions, all as set forth in the Indenture.

The Mayor is hereby authorized and directed to execute and deliver the Series 2016 Bonds in substantially the form thereof contained in the Fifth Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2016 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 2016 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 2016 Bonds in substantially the form contained in the Fifth Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2016 Bonds, their execution to constitute conclusive evidence of such approval.

**Section 3.** To prescribe the terms and conditions upon which the Series 2016 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Fifth Supplemental Trust Indenture, by and among the City, the Corporation and the Trustee, and the City Clerk is hereby authorized and directed to execute and acknowledge the Fifth 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 Fifth Supplemental Trust Indenture to be accepted, executed and acknowledged by the Corporation and the Trustee. The Fifth 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 Wastewater System net revenues and Electric System surplus net revenues to the Series 2016 Bonds and the terms of the Series 2016 Bonds. The Mayor is hereby authorized to confer with the Corporation, the Trustee, the Underwriters and Bond Counsel in order to complete the Fifth Supplemental Trust Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Fifth Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Fifth 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 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 2016 Bonds. The previous distribution and use of the Preliminary Official Statement in connection with the offer and sale of the Series 2016 Bonds is hereby ratified. 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 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 Corporation, 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 5.** In order to prescribe the terms and conditions upon which the Series 2016 Bonds are to be sold to the Underwriters, the Mayor is hereby authorized and directed to execute, at the request of the Corporation, 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 Corporation, 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 6.** In order to provide for the redemption of the Series 2010 Bonds, the Mayor is hereby authorized and directed to execute an Escrow Deposit Agreement to be dated as of the date of its execution (the "Escrow Agreement"), by and between the City and First Security Bank, as escrow trustee (the "Escrow Trustee"), and the Mayor is hereby authorized and directed to cause the Escrow Agreement to be executed by the Escrow Trustee. The Escrow Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Corporation, the Underwriters and Bond Counsel in order to complete the Escrow Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the Escrow Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Escrow 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 City, the Wastewater 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 among the City, the Corporation and First Security 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 Corporation and 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 Corporation, 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 2016 Bonds and to effect the execution and delivery of the Fifth Supplemental Trust Indenture, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Escrow Agreement, the Official Statement and a Tax Compliance Agreement relating to the tax exemption of interest on the Series 2016 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.** 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 2016 Bonds.

**Section 10.** The rates for services of the Wastewater System previously enacted pursuant to Ordinance No. O-12-14 are hereby ratified and confirmed. The rates for services of the Electric System previously enacted pursuant to Ordinance No. O-05-143 and Ordinance No. O-15-76 are hereby ratified and confirmed.

**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.

**Section 13.** It is hereby found and determined that there is an urgent need to refinance certain outstanding indebtedness of the City secured by revenues of the Wastewater System in order to lower the interest cost on obligations payable from Wastewater System revenues, 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 8<sup>th</sup> DAY OF DECEMBER, 2015.

Approved:

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

Attest:

  
\_\_\_\_\_  
Michael O. Garrett  
City Clerk/Treasurer  
(S E A L)