

**ORDINANCE NO. 2022 - 02**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REFUNDING BONDS, SERIES 2022 FOR THE PURPOSE OF REFUNDING THE CITY'S SALES AND USE TAX BONDS, SERIES 2015; PLEDGING COLLECTIONS OF A 1% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY**

**WHEREAS**, the people of the State of Arkansas (the "State") by the adoption of Amendment No. 62 to the Constitution of the State, approved November 6, 1984 ("Amendment 62"), have authorized cities and counties in the State to issue bonds, upon voter approval, to finance and refinance certain capital improvements of a public nature, and to secure said bonds by a pledge of the proceeds of certain taxes; and

**WHEREAS**, Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act") and Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Municipal General Sales and Use Tax Act") authorizes the levy of special citywide sales and use taxes; and

**WHEREAS**, an election of the electors of the City was held on November 7, 2000 pursuant to Ordinance No. 2000-82 adopted by the City Council of the City on September 11, 2000 (the "Tax Election Ordinance") on the question approved levying a sales and use tax at the rate of one percent (1.00%) on the receipts from the sales at retail within the City of all items that are subject to taxation under the Arkansas Gross Receipts Act of 1941, as amended (A.C.A. §§26-52-101, et seq.), and the receipts from storing, using, distributing or consuming within the City tangible personal property under the Arkansas Compensating Tax Act of 1949, as amended (A.C.A. §§26-53-101, et seq.) (collectively, the "Sales and Use Tax"); and

**WHEREAS**, the Sales and Use Tax has been collected since April 1, 2001; and

**WHEREAS**, the electors of the City approved the pledge of the net collections of the Sales and Use Tax (the "Pledged Tax") to the repayment of and security for the Prior Bonds (defined below) in accordance with the Local Government Bond Act at a special election held on April 14, 2015 pursuant to Ordinance No. 2015-02 of the City adopted on January 12, 2015 (the "Pledge Election Ordinance"); and

**WHEREAS**, the City issued its \$1,980,000 Sales and Use Tax Bonds, Series 2015 (the "Prior Bonds") pursuant to Ordinance No. 2015-08 of the City adopted on May 27, 2015 in order to finance the costs of improvements to the streets and infrastructure within the City (the "Project"); and

**WHEREAS**, the City previously authorized the Mayor to retain Stephens Inc. as Underwriter (the "Underwriter") and Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. as

Bond Counsel (“Bond Counsel”) in evaluating the feasibility of issuing refunding bonds to achieve net present value savings; and

**WHEREAS**, the City has determined that it can achieve net present value savings by refunding the Prior Bonds; and

**WHEREAS**, the City desires that the costs of refunding the Prior Bonds be financed with the City’s Sales and Use Tax Bonds, Series 2022 in an aggregate principal amount not to exceed \$1,740,000 (the “Bonds”); and

**WHEREAS**, the City is offering, and the Underwriter, is expected to agree to purchase for offering to the public all (but not less than all) of the Bonds, at the aggregate purchase price set forth in the Bond Purchase Agreement (hereinafter defined); and

**WHEREAS**, in order for the Underwriter to market the Bonds, it is necessary to prepare a preliminary official statement (the “Preliminary Official Statement”) and bond purchase agreement (the “Bond Purchase Agreement”), and in order to secure the bonds and provide certain information to investors, it is necessary to prepare Trust Indenture (the “Indenture”) between the City and Simmons Bank, Pine Bluff, Arkansas (the “Trustee”) to establish the general provisions relating to the Bonds, provide for the security and payment of the Bonds and the rights of the owners thereof, an Official Statement (“Official Statement”) setting forth certain information with respect to the Bonds for the City and the respective owners of the Bonds, and a Continuing Disclosure Agreement (the “Disclosure Agreement”) between the City and Simmons Bank, Pine Bluff, Arkansas, as dissemination agent, providing for the ongoing disclosure obligations of the City with respect to the Bonds (the Preliminary Official Statement, the Bond Purchase Agreement, the Indenture, the Official Statement, the Continuing Disclosure Agreement and all other documents contemplated thereby or executed in connection therewith referred to as the “Bond Documents”); and

**WHEREAS**, the City Council of the City desires to authorize the Mayor of the City to negotiate, approve the terms of and sign the Bond Documents, including, but not limited to the Bond Purchase Agreement, the Preliminary Official Statement, the Indenture, the Official Statement and the Continuing Disclosure Agreement; and

**WHEREAS**, the City intends to issue the Bonds as expeditiously as possible; and

**WHEREAS**, in order to market the Bonds and determine the total principal amount of the Bonds, the Underwriter requires a Preliminary Official Statement in a form deemed final pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Fairfield Bay, Arkansas:

**Section 1. The Refunding.** The Prior Bonds shall be refunded for the purpose of achieving net present value savings (the “Refunding”). The City Council hereby finds and declares that the remaining useful life of the Project will be more than 23 years, which is longer than the term of the Bonds.

**Section 2. The Bonds.** Under the authority of the Authorizing Legislation, the Bonds are hereby authorized and ordered issued in a total principal amount not to exceed \$1,740,000, the proceeds of which are necessary to accomplish the Refunding, including, without limitation, legal fees and other necessary expenses incidental to the accomplishment of the Refunding and to the issuance of the Bonds.

**Section 3. Pledge of Sales and Use Tax.** The City hereby expressly pledges and appropriates all of the revenues derived by the City from collections of the Pledged Tax to the payment of the principal of and interest on the Bonds when due at maturity or at redemption prior to maturity, administrative costs, the fees and expenses of the Trustee and any required arbitrage rebate due to the United States. The City covenants that the Pledged Tax shall not be repealed or reduced while any Bonds are outstanding. The City further covenants to use due diligence in collecting the Pledged Tax. Nothing herein shall prohibit the City from increasing the Pledged Tax from time to time, to the extent permitted by law, and no part of the revenues derived from any such increase shall become part of the revenues pledged to the Bonds. For so long as the Bonds shall be outstanding, the Pledged Tax shall be payable directly to Simmons, Bank, Pine Bluff, Arkansas, as trustee for the Bonds.

**Section 4. Authorization of Mayor.** The City Council hereby authorizes and directs the Mayor of the City to carry out or cause to be carried out all appropriate actions, to execute such other certificates or documents to evidence authority as authorized herein, and to take such other actions as the Mayor, in consultation with Bond Counsel, the Underwriter and the Trustee, shall consider necessary or advisable in connection with this Ordinance, the Preliminary Official Statement and the Bond Documents, in order to prepare for the issuance, sale, and delivery of the Bonds by the City, all as authorized by law and this Ordinance. The Underwriter, upon final approval of the Mayor, is authorized to rely upon and to use the Preliminary Official Statement to market the Bonds to potential purchasers

**Section 5. Bond Purchase Agreement.** The form of Bond Purchase Agreement between the City and the Underwriter is before this City Council, and the Mayor is authorized to execute the Bond Purchase Agreement on behalf of the City. The Bond Purchase Agreement shall provide that the aggregate principal amount of the Bonds shall not be greater than \$1,740,000 and that the Bonds shall bear interest with a true interest cost not to exceed three and 25/100 percent (3.25%). The final maturity date for the Bonds shall not exceed June 1, 2045. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates) and shall be subject to redemption prior to maturity, all upon the terms and conditions to be set forth in the Indenture (hereinafter authorized) securing the Bonds. The Mayor is hereby authorized and directed, for and on behalf of the City, to execute the Purchase Agreement and to take all action required on the part of the City to fulfill its obligations under the Purchase Agreement.

**Section 6. Preliminary Official Statement.** The preparation of a Preliminary Official Statement and the distribution of such Preliminary Official Statement to prospective purchasers of the Bonds are hereby approved. The Mayor of the City is hereby authorized and directed to cause the Preliminary Official Statement to be delivered for and in the name of the City, with such provisions therein as shall be approved by the Mayor, who is authorized to execute and deliver to the Underwriter of the Bonds, a certificate when requested by the

Underwriter of the Bonds, to the effect that the Preliminary Official Statement is deemed final for the purposes of Securities and Exchange Commission Rule 15c2-12 and is accurate and complete. The execution of the Preliminary Official Statement by the Mayor and the distribution of the Preliminary Official Statement in marketing the Bonds is hereby authorized, confirmed and ratified.

**Section 7. Official Statement.** The preparation of a final Official Statement and the distribution of such Official Statement to purchasers of the Bonds are hereby approved. The Mayor of the City is hereby authorized and directed to cause the Official Statement to be delivered for and in the name of the City, with such provisions therein as shall be approved by the Mayor, who is authorized to execute and deliver to the Underwriter of the Bonds, a certificate when requested by the Underwriter of the Bonds, to the effect that the Official Statement is accurate and complete.

**Section 8. Trust Indenture.** That 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 the Indenture, and the City Clerk/Recorder/Treasurer is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk/Recorder/Treasurer are hereby authorized and directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee. The Mayor is hereby authorized to approve the form of Indenture between the City and the Trustee to establish the general provisions relating to the Bonds, provide for the security and payment of the Bonds and the rights of the owners thereof, and the Mayor is hereby authorized to execute the Indenture on behalf of the City.

**Section 9. Continuing Disclosure Agreement.** The Disclosure Agreement, in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval, is hereby approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement on behalf of the City. The Mayor and the City Clerk/Recorder/Treasurer are each authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement.

**Section 10. Further Authority.** That the Mayor and City Clerk/Recorder/Treasurer, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to effect the execution and delivery of Indenture, the performance of all obligations of the City under and pursuant to the Indenture, the issuance, execution, sale and delivery of the Bonds and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. That the Mayor and the City Clerk/Recorder/Treasurer be, and they are hereby, further authorized and directed, for and on behalf of the City, to execute all papers, documents, agreements, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof, including, but not limited to, the execution and delivery of the Bond Purchase Agreement, the Disclosure Agreement, the Preliminary Official Statement, the Official Statement, and necessary tax certifications and agreements.

**Section 11. Minutes.** That the City Clerk/Recorder/Treasurer is hereby authorized and directed to file in the office of the City Clerk/Recorder/Treasurer, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person a copy of the documents referenced in this Ordinance and such documents shall be on file for inspection by any interested person.

**Section 12. Designation as “Qualified Tax Exempt Obligations”.** The Bonds are hereby designated as “qualified tax exempt obligations” within the meaning of the Internal Revenue Code of 1986, as amended. The City represents that the aggregate principal amount of qualified tax exempt obligations issued for the benefit of the City in calendar year 2022 is not reasonably expected to exceed \$10,000,000.

**Section 13. Severability.** That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

**Section 14. Repeal if Conflict.** That all parts of the Municipal Code, City ordinances, City resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

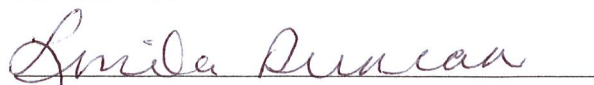
**Section 15. Publication.** Following adoption, this Ordinance shall be posted in the five (5) usual public places in the City and published in a newspaper of general circulation, in both Van Buren County and Cleburne County, at least one time, in each separate county.

**Section 16. Emergency Clause.** It is hereby ascertained and declared that the Refunding must be accomplished as soon as possible to accommodate the needs of the City, its inhabitants and persons residing in the area served by the Project, without which the life, health, safety and welfare thereof are jeopardized, and that the issuance of the Bonds and the taking of the other action authorized by this Ordinance is necessary for the accomplishment thereof. 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 take effect and be in force from and after its passage.

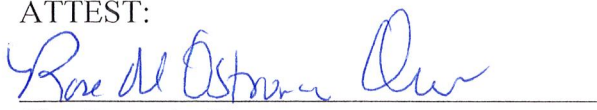
**Section 17. NOT TO BE CODIFIED.** This Ordinance shall not be codified in the Municipal Code.

PASSED: January 31, 2022.

APPROVED:

  
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Mayor

ATTEST:

  
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City Recorder/Treasurer

[S E A L]