

ORDINANCE NO. 2015-26

CITY OF BELLA VISTA, ARKANSAS

AUTHORIZING BORROWING OF AN AMOUNT NOT TO EXCEED \$2,400,000.00 PURSUANT TO ARKANSAS CONSTITUTIONAL AMENDMENT 78 FOR THE FINANCING OF THE NEW STREET DEPARTMENT FACILITY ALONG WITH VARIOUS CAPITAL ASSETS INCLUDED THEREIN BY ISSUANCE OF A PROMISSORY NOTE; PROVIDING FOR SECURITY FOR THE REPAYMENT OF THE PROMISSORY NOTE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

WHEREAS, the City Council of the City of Bella Vista, Arkansas (the “City”) has determined that the City is in need of financing related to the costs of construction of a new street department facility along with various capital assets to be included therein for use by City Street Department which serves the City (the “Project and Equipment”); and

WHEREAS, the financing need for the Project and Equipment is an amount not to exceed Two Million Four Hundred Thousand Dollars (\$2,400,000.00); and

WHEREAS, the City can obtain the necessary funds to finance the Project and Equipment by issuing its Promissory Note in favor of Arvest Bank (“Lender”) in the principal amount not to exceed Two Million Four Hundred Thousand Dollars (\$2,400,000.00) (the “Note”);

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

SECTION 1: The City Council hereby finds that the Project and Equipment to be acquired will have a useful life of more than one (1) year and that the principal amount of the Note, plus all other obligations heretofore incurred by the City under Amendment 78 to the Arkansas Constitution (“Amendment 78”) does not exceed five percent (5%) of the assessed value of taxable property located within the City as determined by the last tax assessment.

SECTION 2: Under the authority of the Constitution and laws of the State of Arkansas (the “State”) including, Amendment 78, the Mayor and City Clerk are hereby authorized to execute and deliver, by and on behalf of the City, a Promissory Note in favor of Lender in the maximum principal amount not to exceed Two Million Four Hundred Thousand Dollars (\$2,400,000.00) for the purpose of financing the Project and Equipment. The Note shall be dated within ninety (90) days of the date of enactment of this Ordinance and shall be issuable only as a fully registered Note without coupons. The Note shall bear interest at an interest rate of one and eight hundred twenty-five thousandths percent (1.825%), and shall be paid in ten (10) equal semi-annual installments of principal and interest, to mature on the date which is sixty (60) months from the date of the Note. As security for the performance of the obligations of the City pursuant to the Note, coincident with the execution and delivery of the Note, there is authorized the execution by

the Mayor and City Clerk, and delivery of a mortgage, deed of trust, and/or security agreement granting unto and in favor of the Lender (as secured party), a prior lien upon the Project and Equipment (the "Mortgage and/or Security Agreement"). The Lender is authorized to file one or more financing statements to perfect the lien granted by any Security Agreement.

SECTION 3: The Note shall be in such form as shall be approved by the Lender and the Mayor and City Clerk.

SECTION 4: As provided in Amendment 78, the debt service payments on the Note in each fiscal year shall be charged against and paid from the general revenues of the City for such fiscal year. For the purpose of making the debt service payments, there is hereby, and shall be appropriated to pay the Note, an amount of general revenues of the City sufficient for such purposes in each fiscal year of the City. The City covenants that for each fiscal year in which the Note is outstanding, the general revenues of the City shall exceed the amount of debt service payments due on the Note in that fiscal year.

SECTION 5: The City agrees to have its financial statements audited annually by the Joint Legislative Auditing Committee, Division of Legislative Audit of the State of Arkansas. While the Note is outstanding, a copy of the audit report shall be furnished to the Lender on request.

SECTION 6: The City agrees to prepare and adopt a budget for each fiscal year in accordance with Arkansas law and to furnish the Lender with a copy of the same by January 31 of each year while the Note is outstanding. Each budget shall make provision for the payment of debt service due on the Note in that fiscal year.

SECTION 7: If there be any default in the payment of the principal of or interest on the Note, or in the performance of any of the other covenants contained in this Ordinance, Lender may, in addition to any other remedies available to Lender, by proper suit, compel the performance of the duties of the officials of the City under the laws of the State of Arkansas. No remedy conferred upon or reserved to Lender is intended to be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or by law. Lender may waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent defaults or defaults or impair any rights or remedies of Lender with respect thereto. No delay or omission of Lender to exercise any right or power accrued upon any default shall impair any such right or power of shall be construed to be a waiver of any such default or an acquiescence therein; and every power or remedy given by this Ordinance to Lender may be exercised from time to time and as often as may be deemed expedient. In any proceeding to enforce the provision of this Ordinance, Lender shall be entitled to recover from the City all costs of such proceeding, including reasonable attorneys' fees.

SECTION 8: The terms of this Ordinance, the Note and the Mortgage and/or Security Agreement shall constitute a contract between the City and the Lender and no variation or change

in the undertaking herein set forth shall be made while the Note is outstanding, except as may be agreed in writing as between the City and Lender.

SECTION 9: The City covenants that it shall not take any action or suffer or permit any action to be taken or conditions to exist which causes or may cause the interest payable on the Note to be included in gross income for federal income tax purposes, including, without limitation, any action in violation of the applicable provisions of the Internal Revenue Code of 1986 (the “Code”), and the Regulations thereunder. The City represents that it has not used or permitted the use of, any covenants that it will not use or permit the use of the Equipment or the proceeds of the Note, in such manner as to cause the Note to be “private activity bonds” within the meaning of Section 141 of the Code. The Note is hereby designated as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3)(B) of the Code. The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Note is issued, a statement as required by Section 149(c) of the Code.

SECTION 10: The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

SECTION 11: All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 12: Emergency Clause. The Immediate need to acquire the Equipment in order to continue to provide essential services to the citizens and residents of the City being necessary for the preservation of the public peace, health, safety and welfare, an emergency is hereby found to exist and this Ordinance shall be in full force and effect from and after its passage.

Motion to Approve by Alderman Wozniak, second Alderman Morgan. Ayes: 5, Nays: 0
PASSED THIS 26th DAY OF OCTOBER, 2015.

APPROVED:

PETER CHRISTIE
MAYOR

ATTEST:

WAYNE JERTSON
CITY CLERK

Requested by: Mayor
Prepared by: Jason Kelley, Staff Attorney