

ORDINANCE NO. 0-97-60

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX CAPITAL IMPROVEMENT AND REFUNDING BONDS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND/OR EQUIPPING VARIOUS CAPITAL IMPROVEMENTS AND FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING INDEBTEDNESS OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PRESCRIBING MATTERS RELATED THERETO; AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ordinance No. 0-93-47 duly adopted by the City Council of the City of Conway, Arkansas (the "City") on August 20, 1993 (the "1993 Election Ordinance"), there was submitted to the qualified electors of the City various questions regarding the issuance, under Amendment 62 to the Constitution of Arkansas ("Amendment 62"), as implemented by Act 871 of the General Assembly of the State of Arkansas for the year 1985, as amended (the "Act"), of sales and use tax capital improvement bonds in aggregate principal amount not to exceed \$14,000,000 to provide funds to pay the cost of acquiring, constructing and/or equipping certain capital improvement projects described in the 1993 Election Ordinance; and

WHEREAS, in order to secure the payment of said bonds, the 1993 Election Ordinance provided for (i) the pledge of all proceeds received from a one-half percent (1/2%) local sales and use tax thereby levied by the City and (ii) to the extent needed to pay debt service on said bonds, the pledge of all proceeds of the City's existing one percent (1%) local sales and use tax (the "1% Sales and Use Tax") levied and collected pursuant to Ordinance No. 0-81-42 of the City duly adopted September 24, 1981; and

WHEREAS, at a special election held September 21, 1993, a majority of the qualified electors of the City voting on the questions approved the issuance of the bonds and the pledge of the sales and use taxes; and

WHEREAS, pursuant to Ordinance No. 0-93-57 of the City duly adopted October 21, 1993, the City determined to issue and sell its \$14,000,000 Sales and Use Tax Capital Improvement Bonds, Series 1993A (the "1993A Bonds"), as permitted under Amendment 62 and the Act; and

WHEREAS, pursuant to Amendment 62 and the Act, the City is permitted to issue sales and use tax capital improvement refunding bonds to refund existing indebtedness of the City secured by and payable from local sales and use taxes; and

WHEREAS, due to a decline in interest rates, the refunding of the 1993A Bonds will result in significant debt service savings to the City; and

WHEREAS, pursuant to Ordinance No. 0-97-45 of the City duly adopted on September 2, 1997 (the "1997 Election Ordinance"), there was submitted to the qualified electors of the City various questions regarding the issuance, under Amendment 62 and the Act, of sales and use tax capital improvement bonds in aggregate principal amount not to exceed \$25,665,000 to provide funds to pay the cost of acquiring, constructing and/or equipping various capital improvements in the City described in the 1997 Election Ordinance, said bonds to be secured by (i) the pledge of all proceeds received from a one-half percent (1/2%) local sales and use tax (the "1/2% Sales and Use Tax") levied by the City in the 1997 Election Ordinance and (ii) to the extent needed to pay debt service on said bonds, the pledge of all proceeds of the 1% Sales and Use Tax; and

WHEREAS, at a special election held October 7, 1997, a majority of the qualified electors of the City voting on the questions approved the issuance of said bonds and the pledge of the 1/2% Sales and Use Tax and the 1% Sales and Use Tax; and

WHEREAS, the City has now determined to issue and sell its \$25,665,000 Sales and Use Tax Capital Improvement Bonds, Series 1997A (the "Series 1997A Bonds"), and to issue and sell its \$6,570,000 Sales and Use Tax Capital Improvement Bonds, Series 1997B Refunding (the "Series 1997B Refunding Bonds"), as permitted under Amendment 62 and the Act (collectively, the Series 1997A Bonds and the Series 1997B Refunding Bonds shall be referred to herein as the "Series 1997 Bonds"); and

WHEREAS, in order to prescribe the terms of and security for the Series 1997 Bonds, the City has made arrangements to enter into a Trust Indenture to be dated as of December 1, 1997 (the "Indenture"), by and between the City and First Commercial Trust Company, National Association, Little Rock, Arkansas, as trustee (the "Trustee"), a form of which is presented to and before this meeting; and

WHEREAS, the City has made arrangements for the sale of the Series 1997 Bonds to Stephens Inc., of Little Rock, Arkansas, and Crews & Associates, Inc., of Little Rock, Arkansas (collectively, the "Underwriters"), and in connection therewith has prepared and distributed a Preliminary Official Statement dated November 10, 1997 (the "Preliminary Official Statement"), a copy of which is presented to and before this meeting; and

WHEREAS, there has been submitted to the City by the Underwriters a Bond Purchase Agreement dated November 20, 1997 (the "Bond Purchase Agreement"), providing for the purchase of the Series 1997 Bonds, a copy of which is presented to and before this meeting; and

WHEREAS, in order to provide for the refunding of the Series 1993A Bonds, the City has made arrangements to enter into an Escrow Deposit Agreement to be dated as of December 1, 1997 (the "Escrow Agreement"), by and between the City and Bank of New York, as escrow trustee (the "Escrow Trustee"), a form of which is presented to and before this meeting; and

WHEREAS, in order to provide for continuing disclosure of certain financial and operating information with respect to the 1/2% Sales and Use Tax, the 1% Sales and Use Tax and the City in compliance with U.S. Securities and Exchange Commission Rule 15c2-12, the City proposes to enter into a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") with the Trustee, in substantially the form presented to and before this meeting; and

WHEREAS, an open public hearing on the question of the issuance of the Series 1997 Bonds has been held before the City Council of the City on this date, following publication of notice of such public hearing in *The Log Cabin Democrat* on November 10, 1997.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Conway, Arkansas, that:

Section 1. All actions heretofore taken by the City and the Underwriters in connection with the offer and sale of the Series 1997 Bonds, including preparation and distribution of the Preliminary Official Statement, are hereby in all respects ratified and approved.

Section 2. To provide funds for the purpose of acquiring, constructing and/or equipping street improvements, solid waste collection, disposal, compacting and recycling facilities and equipment, public park facilities and equipment, fire fighting facilities and equipment, police station facilities and equipment, and municipal court facilities in the City, and to provide funds for the purpose of refunding the Series 1993A Bonds, there is hereby authorized the issuance of bonds of the City pursuant to Amendment 62 and the Act to be designated "City of Conway, Arkansas Sales and Use Tax Capital Improvement Bonds, Series 1997A and Series 1997B Refunding."

The Series 1997A Bonds shall be issued in the aggregate principal amount of \$25,665,000, in the forms and denominations set forth in the Indenture, shall be dated December 1, 1997, shall be numbered as provided in the Indenture, shall be subject to redemption prior to maturity upon the terms and conditions set forth in the Indenture, and shall mature and bear interest as set forth in the Bond Purchase Agreement and the Indenture.

The Series 1997B Refunding Bonds shall be issued in the aggregate principal amount of \$6,570,000, in the forms and denominations set forth in the Indenture, shall be dated December 1, 1997, shall be numbered as provided in the Indenture, shall be subject to redemption prior to maturity upon the terms and conditions set forth in the Indenture, and shall mature and bear interest as set forth in the Bond Purchase Agreement and the Indenture.

Section 3. In order to pay the Series 1997 Bonds as they mature or are called for redemption prior to maturity, with interest thereon, there is hereby pledged (i) all proceeds of the City's one-half percent (1/2%) sales and use tax (the "1/2% Sales and Use Tax") levied by the City pursuant to Ordinance No. 0-97-45 of the City, adopted September 2, 1997, and (ii) only to the extent needed, the proceeds of the City's one percent (1%) local sales and use tax (the "1% Sales and Use Tax") levied pursuant to Ordinance No. 0-81-42 of the City, adopted September 24, 1981. The pledge of and lien on receipts from the 1/2% Sales and Use Tax and the 1% Sales and Use Tax shall secure the Series 1997A Bonds and the Series 1997B Refunding Bonds on a parity basis. The pledge of and lien on the receipts from the 1% Sales and Use Tax securing the Series 1997 Bonds is junior and subordinate to a prior pledge and lien on such receipts securing the City's Sales and Use Tax Capital Improvement Bonds, Series 1993B Refunding, presently outstanding in the principal amount of \$605,000. Collection of the 1/2% Sales and Use Tax and the 1% Sales and Use Tax shall continue as long as either the Series 1997A Bonds or the Series 1997B Refunding Bonds are outstanding. The City covenants and agrees that all receipts from said taxes shall be accounted for separately as special funds on the books of the City. The City's collections of the taxes shall be deposited and shall be used solely as provided in the Indenture.

Section 4. To prescribe the terms and conditions upon which the Series 1997 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 "Indenture"), by and between the City and First Commercial Trust Company, National Association, Little Rock, Arkansas, as trustee (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the 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 Indenture to be accepted, executed and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and the Underwriters in order to complete the Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the 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. 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 1997 Bonds. The Preliminary Official Statement is hereby "deemed final" within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934. The distribution of the Preliminary Official Statement is hereby approved and 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 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 Trustee and the Underwriters in order to complete the Official Statement in substantially the form 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 6. There is hereby authorized and directed the acceptance of the offer by the Underwriters, pursuant to a Bond Purchase Agreement to be dated as of the date of its execution (the "Bond Purchase Agreement"), to purchase the Series 1997A Bonds at a price of \$25,215,862.50 plus accrued interest thereon from December 1, 1997 to the date of delivery thereof, and to purchase the Series 1997B Refunding Bonds at a price of \$6,455,025.00 plus accrued interest thereon from December 1, 1997 to the date of delivery thereof. In order to prescribe the terms and conditions upon which the Series 1997 Bonds are to be sold to the Underwriters, the Mayor is hereby authorized and directed to execute the Bond Purchase Agreement on behalf of the City, 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 Underwriters 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 7. In order to provide for the defeasance and refunding of the Series 1993A Bonds, the Mayor is hereby authorized and directed to execute an Escrow Deposit Agreement (the "Escrow Agreement"), by and between the City and Bank of New York, as escrow trustee (the "Escrow Trustee"), and the Mayor is hereby authorized and directed to cause the Escrow Agreement to be accepted, executed and acknowledged 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 Escrow Trustee and the Underwriters 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 8. In order to provide for continuing disclosure of certain financial and operating information with respect to the 1/2% Sales and Use Tax, the 1% Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the Securities Exchange Act of 1934, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be accepted, executed and acknowledged by the Trustee. 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 Trustee and the Underwriters 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 9. In order to secure lower interest rates on the Series 1997 Bonds, the Underwriters have proposed that the City purchase a policy of municipal bond insurance with a portion of the proceeds of the Series 1997 Bonds, which policy shall guarantee the scheduled payment of principal of and interest on the Series 1997 Bonds when due. A commitment letter dated November 10, 1997 (the "Insurance Commitment") has been received by the City from Financial Security Assurance Inc. ("FSA") setting forth the conditions for the issuance of such a policy by FSA. The Insurance Commitment is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized and directed to execute the Insurance Commitment and to do any and all things necessary to accomplish the delivery of a municipal bond insurance policy by FSA with respect to the Series 1997 Bonds.

(Advice is given that a copy of the Insurance Commitment is on file with the City Clerk and is available for inspection by any interested person.)

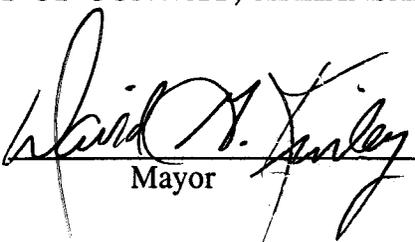
Section 10. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Series 1997 Bonds and to effect the execution and delivery of the Indenture, the Official Statement, the Bond Purchase Agreement, the Escrow Agreement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Series 1997 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 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. The City Council hereby determines that the City of Conway is in dire need of additional capital funds in order to accomplish and provide essential capital improvements and refund existing indebtedness of the City; that an appropriate way to provide such funds is by the issuance of bonds payable from sales and use tax revenues as authorized by Amendment 62 and the implementing legislation therefor; and that this ordinance shall be given immediate effect so that essential capital improvements may be acquired, constructed and equipped and so that debt service savings may be realized 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 full force and effect from and after its passage and approval.

Adopted this 20th day of November, 1997.

CITY OF CONWAY, ARKANSAS

By: 

Mayor

ATTEST:

By: 

City Clerk

[S E A L]