

⑧ Conway

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FAULKNER COUNTY CIRCUIT CLERK

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by

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*AM* D.C.

**ORDINANCE O-06-10**

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S NOT TO EXCEED (1) \$9,755,000 SALES AND USE TAX REFUNDING BONDS, SERIES 2006A, AND (2) \$7,525,000 SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2006B, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 1997A, AND FINANCING THE COST OF POLICE STATION FACILITIES WITHIN THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2006 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2006 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2006 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT PROVIDING FOR THE DEFEASANCE AND REDEMPTION OF THE SERIES 1997A BONDS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.**

**WHEREAS**, the City Council of the City of Conway, Arkansas (the "City") has determined that there is a critical need for a source of revenue to finance police station facilities within the City, including the acquisition of land and the construction and equipping of a building or buildings and related facilities thereon (the "Project"); and

**WHEREAS**, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2005 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

**WHEREAS**, the provisions of the Municipal General Sales and Use Tax Act of 1981, codified as Arkansas Code of 1987 Annotated (1997 Repl. & 2005 Supp.) Sections 26-75-201 *et seq.* (as from time to time amended, the "Municipal General Sales and Use Tax Act"), authorizes the levy of general citywide sales and use taxes; and

**WHEREAS**, pursuant to the authority of Amendment 62 and the Local Government Bond Act, the City has previously issued its Sales and Use Tax Capital Improvement Bonds,

Series 1997A (the "Series 1997A Bonds"), presently outstanding in the aggregate principal amount of \$11,700,000; and

**WHEREAS**, pursuant to the provisions of Ordinance No. O-05-147 of the City, adopted and approved on October 25, 2005 (the "Election Ordinance"), there was submitted to the qualified electors of the City the questions of (i) the levy of a general citywide sales and use tax at the rate of one-quarter of one percent (0.25%) under the provisions of the Municipal General Sales and Use Tax Act (the "General Sales and Use Tax"), (ii) the issuance of not to exceed \$11,565,000 in principal amount of refunding bonds pursuant to Amendment 62 and the Local Government Bond Act for the purpose of defeasing the Series 1997A Bonds, said refunding bonds to be secured by a pledge of and lien upon all of the receipts of a special citywide sales and use tax at the rate of one-quarter of one percent (0.25%) levied pursuant to the Local Government Bond Act (the "Special Sales and Use Tax") and, to the extent needed to pay scheduled debt service on the refunding bonds, a pledge of and lien upon all of the receipts of the General Sales and Use Tax, and (iii) the issuance of not to exceed \$7,525,000 in principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act for the purpose of financing the Project, said refunding and capital improvement bonds to be secured by a pledge of and lien upon all of the receipts of the Special Sales and Use Tax and, to the extent needed to pay scheduled debt service, a pledge of and lien upon all of the receipts of the General Sales and Use Tax; and

**WHEREAS**, at a special election held December 13, 2005, a majority of the qualified electors of the City voting on the aforementioned questions approved the levy of the General Sales and Use Tax, the issuance of the refunding bonds and the capital improvement bonds, the corresponding levy of the Special Sales and Use Tax, and the pledge of the receipts of the General Sales and Use Tax and the Special Sales and Use Tax to the payment of the refunding bonds and the capital improvement bonds; and

**WHEREAS**, as authorized under the provisions of Amendment 62 and the Local Government Bond Act, and as approved by the qualified electors of the City, the City has now determined to issue and sell (1) its Sales and Use Tax Refunding Bonds, Series 2006A, in the principal amount of \$9,755,000 (the "Series 2006A Bonds"), and (2) its Sales and Use Tax Capital Improvement Bonds, Series 2006B, in the principal amount of \$7,525,000 (the "Series 2006B Bonds," and together with the Series 2006A Bonds, the "Series 2006 Bonds") for the purposes of defeasing all of the outstanding Series 1997A Bonds and financing the acquisition, construction and equipping of the Project; and

**WHEREAS**, the City has made arrangements for the sale of the Series 2006 Bonds to Stephens Inc., Crews & Associates, Inc. and Morgan Keegan & Company, Inc. (the "Underwriters"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriters (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

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

**Section 1.** All actions heretofore taken by representatives of the City and the Underwriters in connection with the offer and sale of the Series 2006 Bonds, including the preparation and distribution of the Preliminary Statement dated February 15, 2006 (the "Preliminary Official Statement"), are hereby in all respects ratified and approved.

**Section 2.** Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as (1) "Sales and Use Tax Refunding Bonds, Series 2006A" (the "Series 2006A Bonds"), and (2) "Sales and Use Tax Capital Improvement Bonds, Series 2006B" (the "Series 2006B Bonds"). The Series 2006A Bonds shall be issued in the original aggregate principal amount of Nine Million Seven Hundred Fifty-Five Thousand Dollars (\$9,755,000), and shall mature on March 1 in the years 2007 through 2012, inclusive, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement presented to this meeting. The Series 2006B Bonds shall be issued in the original aggregate principal amount of Seven Million Five Hundred Twenty-Five Thousand Dollars (\$7,525,000), and shall mature on March 1 in the years 2012 through 2015, inclusive, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement presented to this meeting. The proceeds of the Series 2006 Bonds will be utilized (i) to defease the Series 1997A Bonds, (ii) to finance the acquisition, construction and equipping of the Project, (iii) to establish a debt service reserve or to purchase a surety bond or bonds for reserve purposes, (iv) to pay premiums for bond insurance, if deemed economically beneficial, and (v) to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2006 Bonds. The Series 2006 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 that certain Trust Indenture dated as of March 15, 2006 (the "Indenture"), by and between the City and FirstTrust Financial Services, Inc., Little Rock, Arkansas, as trustee (the "Trustee"), to be entered into by the City and the Trustee in substantially the form submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Series 2006A Bonds and the Series 2006B Bonds, each series to be in substantially the form thereof contained in the Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2006A Bonds and the Series 2006B 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 2006A Bonds and the Series 2006B 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 2006A Bonds and the Series 2006B Bonds in substantially the forms thereof contained in the Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2006A Bonds and the Series 2006B Bonds, their execution to constitute conclusive evidence of such approval.

**Section 3.** In order to pay the principal of and interest on the Series 2006 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all receipts of the Special Sales and Use Tax and the General Sales and Use Tax levied by the Election Ordinance and approved by the voters. As provided in the Indenture, such pledge is made on a

parity basis as to the Series 2006A Bonds and the Series 2006B Bonds. Receipts of the General Sales and Use Tax shall be utilized to pay scheduled debt service on the Series 2006 Bonds only to the extent needed after application of receipts of the Special Sales and Use Tax for such purpose. The levy and collection of the Special Sales and Use Tax and the General Sales and Use Tax shall continue until such time as the Series 2006 Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee under the Indenture to redeem the Series 2006 Bonds in full. The City covenants and agrees that all receipts from the Special Sales and Use Tax and the General Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Special Sales and Use Tax and the General Sales and Use Tax will be deposited and will be used solely as provided in the Indenture.

**Section 4.** To prescribe the terms and conditions upon which the Series 2006 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 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, including, without limitation, the provisions thereof pertaining to the pledge of Sales and Use Tax receipts and the terms of the Series 2006 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriters and Bond Counsel 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 2006 Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The previous 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, 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 6.** There is hereby authorized and directed the acceptance of the offer of 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 2006 Bonds at a price of \$17,163,000.70, plus accrued interest thereon from March 15, 2006 to the date of delivery thereof. In order to prescribe the terms and conditions upon which the Series 2006 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. The Mayor is hereby authorized to confer with 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 7.** In order to provide for continuing disclosure of certain financial and operating information with respect to the Special Sales and Use Tax, the General Sales and Use Tax and the City 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 between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed 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, 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.** In order to provide for the defeasance and redemption of the Series 1997A 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 Regions Bank, Little Rock, Arkansas, 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 Underwriters, the Escrow Trustee 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 9.** In order to secure lower interest rates on the Series 2006A Bonds and the Series 2006B Bonds, the City will purchase policies of bond insurance from CIFG Assurance North America, Inc. (the "Insurer") with a portion of the proceeds of the Series 2006 Bonds, which policies will guarantee the payment of the principal of and interest on the Series 2006 Bonds when due. The execution by the Mayor of an insurance commitment with the Insurer is hereby ratified. The Mayor is hereby authorized to do any and all things necessary to accomplish the delivery of the bond insurance policies with respect to the Series 2006 Bonds.

In order to assure that the maximum amount of proceeds of the Series 2006 Bonds will be available to pay costs of the Project and to fund the escrow for the defeasance of the Series 1997A Bonds, the City will purchase surety bonds to be issued by the Insurer with a portion of the proceeds of the Series 2006 Bonds, which surety bonds will satisfy the funding requirements of the debt service reserve. The prior execution by the Mayor of a commitment with respect to the surety bonds is hereby ratified, and the Mayor is authorized to do any and all things necessary to accomplish the delivery of the surety bonds with respect to the debt service reserve for the Series 2006 Bonds.

**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 2006 Bonds and to effect the execution and delivery of the Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement, the Escrow Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Series 2006 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.** 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.** The City Council hereby finds and determines that the City is in dire need of additional capital funds in order to acquire, construct and equip essential capital improvements and to restructure existing indebtedness for the purpose of recognizing debt service savings thereon, and that an appropriate way to provide such funds and recognize such savings is by the issuance of bonds payable from sales and use tax revenues as authorized by Amendment 62 and the Local Government Bond Act; and that this ordinance should be given immediate effect so that such essential capital improvements and restructuring of indebtedness may each be accomplished 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 AND APPROVED THIS 28 DAY OF February, 2006.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

(SEAL)

**CERTIFICATE**

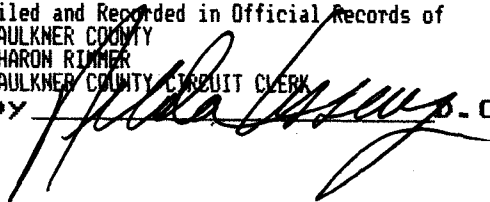
**STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 28<sup>th</sup> day of February 2006, same is duly recorded in the minutes of meeting of said Council.

Witness, my hand and seal of the City of Conway, Arkansas, this 17<sup>th</sup> day of February 2006.

  
CITY CLERK-TREASURER

Seal

**CERTIFICATE OF RECORD**  
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