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ORDINANCE NO. O-07-144

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$14,100,000 OF THE CITY'S RESTAURANT GROSS RECEIPTS TAX CAPITAL IMPROVEMENT BONDS, SERIES 2007, FOR THE PURPOSE OF FINANCING CERTAIN PARK AND TRAIL IMPROVEMENTS WITHIN THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

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 certain park and trail improvements within the City, including the acquisition of land and interests in land and the construction and equipping of structures and related facilities thereon and on existing land and interests in land owned by the City (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 Arkansas Code Annotated (1997 Repl. & 2005 Supp.) Sections 26-75-601 *et seq.* (as from time to time amended, the "Advertising and Promotion Commission Act") 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 taxes on the sale of prepared food and beverages within the City authorized by the Advertising and Promotion Commission Act; and

WHEREAS, as authorized by the Advertising and Promotion Commission Act, the City has previously levied (i) a one percent (1%) tax ("A&P Tax No. 1") pursuant to Ordinance No. O-05-97 adopted on August 16, 2005, and (ii) a one percent (1%) tax ("A&P Tax No. 2") pursuant to Ordinance No. O-05-98 adopted on August 16, 2005, upon the portion of gross receipts received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants and similar businesses within the City from the sale of prepared food and beverages for on-premises or off-premises consumption; and

WHEREAS, pursuant to the provisions of Ordinance No. O-07-54 of the City, adopted and approved on May 8, 2007 (the "Election Ordinance"), and as authorized by the Advertising and Promotion Commission Act and the Local Government Bond Act, there was submitted to the qualified electors of the City the questions of (i) the issuance of not to exceed \$12,535,000 in

principal amount of capital improvement bonds for the purpose of financing the parks component of the Project, and (ii) the issuance of not to exceed \$1,565,000 in principal amount of capital improvement bonds for the purpose of financing the trails component of the Project, said bonds to be secured by a pledge of and lien upon 75% of the receipts of A&P Tax No. 1 and 100% of the receipts of A&P Tax No. 2 (collectively, the "Tax Receipts"); and

WHEREAS, at a special election held June 12, 2007, a majority of the qualified electors of the City voting on the aforementioned questions approved the issuance of the capital improvement bonds and the corresponding pledge of the Tax Receipts to the payment thereof; and

WHEREAS, as authorized under the provisions of the Local Government Bond Act and the Advertising and Promotion Commission Act, and as approved by the qualified electors of the City, the City has now determined to issue and sell its Restaurant Gross Receipts Tax Capital Improvement Bonds, Series 2007, in the principal amount of not to exceed \$14,100,000 (the "Bonds"), for the purpose of financing the Project; and

WHEREAS, the City has made arrangements for the sale of the Bonds to Stephens Inc. and Crews & Associates, 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. Under the authority of the Constitution and laws of the State of Arkansas, including particularly the Advertising and Promotion Commission Act and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Restaurant Gross Receipts Tax Capital Improvement Bonds, Series 2007" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Fourteen Million One Hundred Thousand Dollars (\$14,100,000), shall mature not later than November 1, 2030, and shall bear interest at the rates to be specified in the Bond Purchase Agreement. The average yield on the Bonds as a whole shall not exceed 5.50%. The proceeds of the Bonds will be utilized (i) to finance the acquisition, construction and equipping of the Project, (ii) to establish a debt service reserve or to purchase a surety bond or insurance policy for reserve purposes, (iii) to pay the premium for bond insurance, if deemed economically beneficial, and (iv) to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The 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 to be executed in substantially the form submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee (hereinafter defined). 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 Bonds in substantially the form thereof contained in the Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the Tax Receipts as approved by the voters. As provided in the Indenture, the receipts of A&P Tax No. 2 will be applied first to satisfy the obligations of the City with respect to the Bonds, and the 75% pledged portion of the receipts of A&P Tax No. 1 will be utilized only to the extent needed to satisfy such obligations after application of the receipts of A&P Tax No. 2. The levy and collection of A&P Tax No. 1 and A&P Tax No. 2 shall not be discontinued or reduced while any of the Bonds are outstanding unless sufficient funds are on deposit with the Trustee under the Indenture to redeem the Bonds in full. The City covenants and agrees that all of the Tax Receipts will be accounted for separately as special funds on the books of the City, and all Tax Receipts will be deposited and will be used solely as provided in the Indenture.

Section 3. 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 a Trust Indenture (the "Trust Indenture"), by and between the City and a banking corporation or association to be selected by the Mayor as trustee (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the 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 Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of the Tax Receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriters and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the 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 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 distribution of the Preliminary Official Statement is hereby approved. 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 5. 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 Bonds at a price of 99.0% of the principal amount thereof (plus any net reoffering premium or less any net reoffering discount), plus accrued interest thereon from the dated date of the Bonds to the date of delivery thereof. In order to prescribe the terms and conditions upon which the 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 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the Tax Receipts 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 7. In order to secure lower interest rates on the Bonds, the Underwriters have proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Bonds, which policy will guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriters, the Mayor is hereby authorized to execute an insurance commitment and to

do any and all other things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

In order to assure that the maximum amount of proceeds of the Bonds will be available to pay costs of the Project, the Underwriters have proposed that the City consider the purchase of a surety bond or debt service reserve insurance policy with a portion of the proceeds of the Bonds, which surety bond or debt service reserve insurance policy will satisfy the funding requirements of the debt service reserve fund mandated in the Trust Indenture. If deemed economically advantageous by the Mayor, upon the advice of the Underwriters, the Mayor is hereby authorized to execute a commitment with respect to a surety bond or debt service reserve insurance policy and to do any and all other things necessary to accomplish the delivery of a surety bond or debt service reserve insurance policy with respect to the Bonds.

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 Bonds and to effect the execution and delivery of the Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the 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.

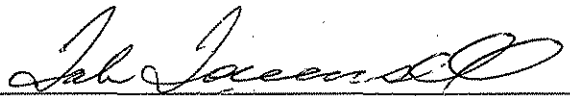
Section 9. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 10. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 11. The City Council hereby finds and determines that the City is in dire need of additional capital funds in order to finance the acquisition, construction and equipping of essential capital improvements to its parks and trail facilities, and that an appropriate way to provide such funds is by the issuance of bonds payable from the Tax Receipts as authorized by the Advertising and Promotion Commission and the Local Government Bond Act; and that this ordinance should be given immediate effect so that such essential capital improvements may 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 6th DAY OF November, 2007.

APPROVED:



Mayor

ATTEST:



City Clerk

(S E A L)