

ORDINANCE NO. O-17-112

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City of Conway

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$9,505,000 OF THE CITY'S RESTAURANT GROSS RECEIPTS TAX REFUNDING BONDS, SERIES 2017, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING RESTAURANT GROSS RECEIPTS TAX CAPITAL IMPROVEMENT BONDS, SERIES 2007; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2017 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 of Conway, Arkansas (the "City") is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Arkansas Code Annotated (2008 Repl. & 2015 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. & 2015 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 and refinance the costs of various capital improvements, 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, as amended, and (ii) a one percent (1%) tax ("A&P Tax No. 2") pursuant to Ordinance No. O-05-98 adopted on August 16, 2005, as amended, 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 certain parks improvements, and (ii) the issuance of not to exceed \$1,565,000 in principal amount of capital improvement bonds for the purpose of financing certain trail improvements, 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, pursuant to Ordinance No. O-07-144 adopted on November 6, 2007, previously issued and sold its Restaurant Gross Receipts Tax Capital Improvement Bonds, Series 2007 (the "Series 2007 Bonds"), in the original principal amount of \$14,100,000, of which \$9,505,000 in principal amount remains outstanding; and

**WHEREAS**, it has now been determined that substantial debt service savings can be achieved through the current refunding of the Series 2007 Bonds, and the City desires to accomplish such refunding through the issuance of its Restaurant Gross Receipts Tax Refunding Bonds, Series 2017 (the "Series 2017 Bonds"), in principal amount not to exceed \$9,505,000; and

**WHEREAS**, the City has made arrangements for the sale of the Series 2017 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 Refunding Bonds, Series 2017" (the "Series 2017 Bonds"). The Series 2017 Bonds shall be issued in the original aggregate principal amount of not to exceed Nine Million Five Hundred Five Thousand Dollars (\$9,505,000), shall mature not later than December 1, 2028, and shall bear interest at the rates to be specified in the Bond Purchase Agreement. The true interest cost on the Series 2017 Bonds as a whole shall not exceed 3.500%. The proceeds of the Series 2017 Bonds will be utilized (i) to redeem all of the outstanding Series 2007 Bonds, (ii) to purchase a municipal bond insurance policy if deemed advantageous by the City and the Underwriters, (iii) to establish a debt service reserve or to purchase a surety bond or insurance policy for reserve purposes if deemed advantageous by the City and the Underwriters, and (iv) to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2017 Bonds. The Series 2017 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 Series 2017 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 Series 2017 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 2017 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 Series 2017 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 Series 2017 Bonds, their execution to constitute conclusive evidence of such approval.

**Section 2.** In order to pay the principal of and interest on the Series 2017 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 Series 2017 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 Series 2017 Bonds are outstanding unless sufficient funds are on deposit with the Trustee under the Indenture to redeem the Series 2017 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 Series 2017 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 Series 2017 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 Series 2017 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 Series 2017 Bonds at a price of at least 99.00% 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 Series 2017 Bonds to the date of delivery thereof. In order to prescribe the terms and conditions upon which the Series 2017 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, as dissemination agent (the "Dissemination Agent"), and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Dissemination Agent. 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 Dissemination Agent, 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 Series 2017, the Underwriters have proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Series 2017 Bonds, which policy would guarantee the payment of the principal of and interest on the Series 2017 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 things necessary to accomplish the delivery of a bond insurance policy with respect to the Series 2017 Bonds.

The Underwriters have further 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 Series 2017 Bonds. 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 Series 2017 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 Series 2017 Bonds and to effect the execution and delivery of the Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement, a Tax Compliance Agreement relating to the tax exemption of interest on the Series 2017 Bonds, and, if necessary, an Escrow Deposit Agreement relating to the redemption of the Series 2007 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 City hereby declares its expectation and intention that bonds issued and to be issued by the City during calendar year 2017 will not in the aggregate exceed \$10,000,000 in principal amount, and the City hereby declares the Series 2017 Bonds to be “qualified tax-exempt obligations” within the meaning of Section 265(b) of the Internal Revenue Code of 1986, as amended.

**Section 10.** 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 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 finds and determines that there is a critical for additional funds to allow the City’s Advertising and Promotion Commission to finance its legal purposes, and that an appropriate way to provide such additional funds is through the restructuring of the existing indebtedness represented by the Series 2007 Bonds. The City Council further finds that such restructuring can be accomplished by the issuance of refunding bonds payable from the Tax Receipts as authorized by the Advertising and Promotion Commission Act and the Local Government Bond Act; and that this ordinance should be given immediate effect so that refinancing 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 10<sup>th</sup> DAY OF OCTOBER, 2017.

APPROVED:

  
\_\_\_\_\_  
Mayor Bart Castleberry

ATTEST:

  
\_\_\_\_\_  
Michael O. Garrett  
City Clerk/Treasurer  
(S E A L)



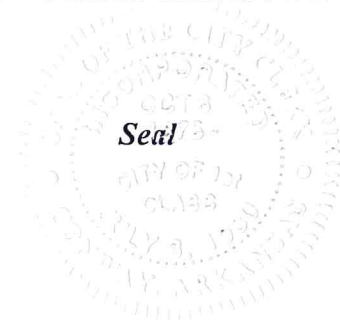
**CERTIFICATE**

**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 an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 10th day of October, 2017 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 19<sup>th</sup> day of October, 2017.

  
**CITY CLERK-TREASURER**



**CERTIFICATE of RECORD**

**Instrument #201716903**

Real Estate Book

Ordinance

Filed: 10/27/2017 10:02 am

Faulkner County, Arkansas

Crystal Taylor, Circuit Clerk

By: Diana Varner, D.C.

**7 Pages**

**\$45.00**