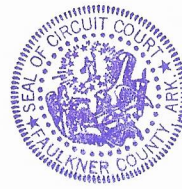


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CERTIFICATE OF RECORD
FAULKNER CO, AR FEE \$50.00

I hereby certify that this instrument was
Filed and Recorded in the Official Records
In Doc Num **L202208906** 8 Pages

RECORDED: 05-13-2022 02:06:04 PM
CRYSTAL TAYLOR
FAULKNER COUNTY CIRCUIT CLERK
BY: DIANA VARNER, D.C.
ORDINANCE

Crystal L. Taylor

Faulkner County Circuit Clerk

Official Use Only – Barcode

Date of Document:

MAY 13, 2022

Type of Document:

ORDINANCE

First Party Name:

CITY OF CONWAY

Second Party Name:

ORDINANCE NO. O-22-36

FAULKNER COUNTY RECORDING COVER SHEET

Please do not detach this page from the original document as it contains important recording information and is part of the permanent record.

ORDINANCE NO. O-22-36

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$38,785,000 OF THE CITY'S RESTAURANT GROSS RECEIPTS TAX CAPITAL IMPROVEMENT AND REFUNDING BONDS, SERIES 2022, FOR THE PURPOSE OF FINANCING CERTAIN COMMUNITY CENTER AND SOCCER FIELD IMPROVEMENTS AND REFUNDING THE CITY'S OUTSTANDING RESTAURANT GROSS RECEIPTS TAX REFUNDING BONDS, SERIES 2017; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2022 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2022 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2022 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 (2020 Repl.) Sections 26-75-601 *et seq.* (as from time to time amended, the "Advertising and Promotion Commission Act") and Arkansas Code Annotated (1998 Repl. & 2021 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, as authorized under the provisions of the Local Government Bond Act and the Advertising and Promotion Commission Act, the City, pursuant to Ordinance No. O-17-112 adopted on October 10, 2017, previously issued and sold its Restaurant Gross Receipts Tax Refunding Bonds, Series 2017 (the "Series 2017 Bonds"), in the original principal amount of \$9,115,000, of which \$6,730,000 in principal amount remains outstanding; and

WHEREAS, the City Council of the City has determined (i) that there is an urgent need for the acquisition, construction and equipping of a community center and additional soccer

fields within the City and (ii) that the debt service obligations of the City secured by A&P Tax No. 1 and A&P Tax No. 2 can be restructured through the refunding of the Series 2017 Bonds; and

WHEREAS, pursuant to the provisions of Ordinance No. O-21-117 of the City, adopted and approved on November 23, 2021 (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 \$27,300,000 in principal amount of capital improvement bonds for the purpose of financing a community center, (ii) the issuance of not to exceed \$5,500,000 in principal amount of capital improvement bonds for the purpose of financing additional soccer fields, and (iii) the issuance of not to exceed \$6,900,000 in principal amount of refunding bonds for the purpose of refunding the Series 2017 Bonds, 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 February 8, 2022, a majority of the qualified electors of the City voting on the aforementioned questions approved all of said questions; and

WHEREAS, the City desires to accomplish such financing of improvements and refinancing of the Series 2017 Bonds, as approved by the voters, through the issuance of its Restaurant Gross Receipts Tax Capital Improvement and Refunding Bonds, Series 2022 (the “Series 2022 Bonds”), in the principal amount of \$38,785,000; and

WHEREAS, the City’s Advertising and Promotion Commission (the “A&P Commission”), by resolution adopted March 14, 2022, has consented to the issuance of the Series 2022 Bonds by the City and the pledge of the Tax Receipts to secure the Series 2022 Bonds; and

WHEREAS, the City has made arrangements for the sale of the Series 2022 Bonds to Crews & Associates, Inc. and Stephens Inc. (the “Underwriters”), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriters (the “Bond Purchase Agreement”) in 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 and Refunding Bonds, Series 2022” (the “Series 2022 Bonds”). The Series 2022 Bonds shall be issued in the original aggregate principal amount of Thirty-Eight Million Seven Hundred Eighty-Five Thousand Dollars (\$38,785,000), shall mature on the dates and in the amounts, and shall bear interest at the rates, all as specified in the Bond Purchase Agreement presented to this meeting. The true interest cost of the Series 2022 Bonds will be approximately 3.912%. The proceeds of the Series 2022 Bonds will be utilized (i) to redeem all of the outstanding Series 2017 Bonds, (ii) to finance

the acquisition, construction and equipping of certain community center and soccer field improvements within the City, (iii) purchase a policy of municipal bond insurance, (iv) to purchase a policy of municipal bond debt service reserve insurance for deposit in a debt service reserve, and (v) to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2022 Bonds. The Series 2022 Bonds shall be issued in the form 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 (as hereinafter defined) to be executed in substantially the form submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Series 2022 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 2022 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 2022 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 2022 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 2022 Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Series 2022 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 the satisfy the obligations of the City with respect to the Series 2022 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 2022 Bonds are outstanding unless sufficient funds are on deposit with the Trustee under the Indenture to redeem the Series 2022 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 2022 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 to be dated as of the date of its execution (the "Trust Indenture"), by and between the City and Bank OZK, an Arkansas banking corporation, 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 2022 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 2022 Bonds. The previous distribution and use of the Preliminary Official Statement in connection with the offer and sale of the Series 2022 Bonds is hereby ratified. 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 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 2022 Bonds at a purchase price of 98.80% of the principal amount thereof plus a net reoffering premium of \$732,585.35. In order to prescribe the terms and conditions upon which the Series 2022 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. (a) In order to secure lower interest rates on the Series 2022 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 Series 2022 Bonds, which policy would guarantee the payment of the principal of and interest on the Series 2022 Bonds when due. Upon a determination that such a purchase would be economically advantageous, the Mayor has executed an insurance commitment with Build America Mutual Assurance Company (“BAM”) for the delivery of a municipal bond insurance policy (the “Bond Insurance Policy”) with respect to the Series 2022 Bonds. The execution of such commitment by the Mayor is hereby ratified, and the Mayor is further authorized to do any and all things necessary to accomplish the delivery of the Bond Insurance Policy.

(b) In order to enhance the amount of proceeds of the Series 2022 Bonds available to pay costs of the projects described above and to refund the Series 2017 Bonds, the Underwriters have proposed that the City consider the purchase of a municipal bond debt service reserve insurance policy with a portion of the proceeds of the Series 2022 Bonds, which policy would satisfy the funding requirements of the debt service reserve described in the Trust Indenture. Upon a determination that such a purchase would be economically advantageous, the Mayor has executed an insurance commitment with BAM for the delivery of a municipal bond debt service reserve insurance policy (the “Reserve Policy”) for deposit in the debt service reserve fund for the Series 2022 Bonds. The execution of such commitment by the Mayor is hereby ratified, and the Mayor is further authorized to do any and all things necessary to accomplish the delivery of the Reserve Policy.

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 2022 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 2022 Bonds, and, if necessary, an Escrow Deposit Agreement relating to the redemption of the Series 2017 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. It is hereby found and determined that there is an urgent need for community center and soccer field improvements within the City and to restructure the indebtedness represented by the Series 2017 Bonds, and in order to do so on the most favorable terms, it is necessary to enter into the Bond Purchase Agreement 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 force and take effect immediately upon and after its passage.

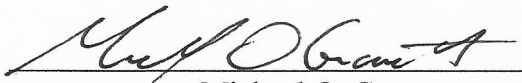
ADOPTED AND APPROVED THIS 12th DAY OF April, 2022.

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 12th day of April, 2022 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 19th day of April, 2022.


CITY CLERK-TREASURER

