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FAULKNER COUNTY CIRCUIT CLERK

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by

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City of Conway, Arkansas

Ordinance No. O-13-68

**AN ORDINANCE AMENDING ORDINANCE NO. O-12-47 WHICH AUTHORIZED THE ISSUANCE OF A PROMISSORY NOTE TO PROVIDE SHORT-TERM FINANCING UNDER AMENDMENT NO. 78 TO THE ARKANSAS CONSTITUTION FOR CERTAIN INFRASTRUCTURE IMPROVEMENTS REQUIRED FOR THE RELOCATED CONWAY MUNICIPAL AIRPORT; PROVIDING FOR PAYMENT OF THE PRINCIPAL AND THE INTEREST ON THE NOTE; APPROPRIATING FUNDS FROM GENERAL REVENUES, INCLUDING PROCEEDS FROM THE SALE OF EXISTING AIRPORT PROPERTY, FOR LOAN REPAYMENT AND AIRPORT IMPROVEMENTS; AUTHORIZING THE CITY TO REIMBURSE THE GENERAL FUND ALL OR A PORTION OF SPECIFIC COSTS INCURRED FOR AIRPORT TERMINAL DESIGN AND CONSTRUCTION COSTS ASSOCIATED WITH THIS PROJECT; REPEALING ANY ORDINANCES IN CONFLICT HERewith; DECLARING AN EMERGENCY; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.**

**WHEREAS**, the City of Conway, Arkansas (the "City") is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") and Act No. 1808 of 2001 (codified as Arkansas Code Annotated § 14-78-101, *et seq.*, the "Act"), to incur tax exempt short term financing obligations maturing over a period of, or having a term not to exceed five (5) years, for the purpose of acquiring, constructing, installing and renting real property or tangible personal property having an expected useful life of more than one year; and

**WHEREAS**, the City is required, by special conditions in the several Federal Aviation Administration grants the City has received, to utilize the proceeds from the sale or value of the existing Cantrell Field property to provide aviation related infrastructure and improvements at the Relocated Conway Airport. The City desires to maintain and operate the existing Cantrell Field until the Relocated Conway Municipal Airport is opened and available to accommodate the aviation needs of the City and thus must postpone the closing of the sale of existing Cantrell Field property until the relocated facility is open. The infrastructure and improvements funded by the proceeds from the sale of the existing Cantrell field are necessary for the opening and operation of the Relocated Conway Airport; and

**WHEREAS**, it is proposed that the City issue its Promissory Note in the principal amount of up to \$6,500,000 (the "Note") under Amendment No. 78 and the Act for the purpose of providing interim financing of all or a portion of the cost for certain infrastructure improvements at the Relocated Conway Municipal Airport in the Lollie Bottoms area of Conway. Specifically the construction, architectural, engineering and other related cost associated with the Terminal Building and furnishings, hangers for aircraft, aviation related parking areas and driveways, offsite and onsite waterlines, wastewater facilities to accommodate airport uses, aviation fueling facilities, equipment to provide aviation aids, the purchase of remaining rights to the use of the real property subject to the existing Cantrell FBO lease and the purchase of land use rights for the purpose of mitigating waterfowl and wildlife attractant areas adjacent to the Relocated Conway Airport and reimburse its General Fund all or a portion of specific costs incurred for infrastructure improvements, specifically airport terminal design and construction costs incurred from on or about April 27, 2012 through June 14, 2013 which total approximately \$162,000.00 and airport operation and maintenance equipment (the "Projects"); and

**WHEREAS**, the City has previously arranged, pursuant to Ordinance No. O-12-47 for the loan (the "Loan") from First Security Bank (the "Lender") and to issue the Promissory Note to the Lender at a price of par in consideration for the Loan; and

**WHEREAS**, no draws have been made and no interest has been incurred on the Promissory Note as contemplated by Arkansas Code Annotated § 14-78-102(4) and § 14-78-104(d), respectively; and

**WHEREAS**, the City and the Lender desire to update certain terms and provisions of the Promissory Note as previously contemplated pursuant to Ordinance No. O-12-47.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:**

**SECTION 1:** The City of Conway City Council (the "City Council") hereby finds that the Projects are real or tangible personal property having a useful life of more than one year. The City Council further finds that the sum of the principal amount of the proposed Promissory Note and the outstanding principal amount of the City's other promissory notes issued under the authority of Amendment 78 do not exceed five percent (5%) of the assessed value of taxable property located within the City as determined by the last tax assessment completed before the issuance of the Proposed Promissory Note.

**SECTION 2:** That under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment No. 78 and the Act, the previous authorization of the Promissory Note is hereby confirmed in the principal amount of up to \$6,500,000 for the purpose of financing all or a portion of the cost of the Projects. The Note shall be dated the date of its issuance and shall bear interest on the outstanding principal amount at a fixed rate of 1.92% per annum (calculated on the basis of the actual number of days elapsed in a year of 365 days (366 days in a leap year). The Note shall be repaid within five years from the first draw thereunder, and the Note shall commence to bear interest as of such date as contemplated by Arkansas Code Annotated § 14-78-102(4) and § 14-78-104(d), respectively. The Note shall be issued in fully registered form. If required by the Lender, the mayor is hereby authorized to pledge the 151 acres of land associated with existing Cantrell Field as security for the Note and the City will transfer title to said property to the Lender if the Note is not repaid.

**SECTION 3:** The City may reimburse its General Fund all or a portion of specific costs incurred for infrastructure improvements, specifically airport terminal design and construction costs incurred from on or about April 27, 2012 through June 14, 2013 which total approximately \$162,000.00 associated with this Project from a portion of the proceeds of this Loan.

**SECTION 4:** That the Lender has previously been selected by the Mayor, and approved by the City Council, based upon the commitment or proposal for the Loan that the Mayor has determined to have the lowest cost to the City after soliciting proposals or commitments for the Loan from at least three financial institutions having offices in Faulkner County.

**SECTION 5:** That the first draw on the borrowings will occur on or before August 1, 2013 and the City will execute the Promissory Note immediately prior to such first draw. Interest will begin to accrue on only the amount borrowed as of the date of each draw.

**SECTION 6:** The debt service payments on the Note repayment shall be charged against and paid from the general revenue of the City within five years but not later than five (5) years from the date of the first draw when the obligation commences to bear interest, as contemplated by Arkansas Code Annotated § 14-78-102(4) and § 14-78-104(d), respectively. For the purpose of making the debt service, sufficient proceeds from the sale of the existing Cantrell Filed Property (151 Acres) to cover the repayment of all funds borrowed under the Promissory Note along with accrued interest, shall be deposited in general revenue fund of the City. Upon closing of the sale of said property and deposit of those funds in the General Fund account, the City's Director of Finance is hereby authorized and directed to withdraw from the General Fund of the City the amounts necessary to make the lump sum debt service payment on the Note.

**SECTION 7:** The City covenants that it shall not take any action or suffer or permit any action to be taken or conditions to exist which causes or may cause the interest payable on the Note to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the Note will not be used directly or indirectly in such manner as to cause the Note to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

**SECTION 8:** The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of the proceeds of the Note, in such manner as to cause the Note to be "private activity bonds" within the meaning of Section 141 of the Code.

**SECTION 9:** The City covenants that it will take no action which would cause the Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Article shall prohibit investments in bonds issued by the United States Treasury.

**SECTION 10:** The City covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Note is issued, a statement as required by Section 149(e) of the Code.

**SECTION 11:** The City covenants that it will not reimburse itself from proceeds of the Note for costs paid prior to the date the Note is issued except in compliance with United States Treasury Regulation No. 1.150-2 (the "Regulation"). The adoption of Ordinance No. O-12-47 constituted the City's "official intent" for purposes of the Regulation.

**SECTION 12:** The Note is hereby designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Code. The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code which are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), including those of its subordinate entities issued in calendar year 2013 are not expected to exceed \$10,000,000.

**SECTION 13:** That the Mayor and City Clerk, for and on the behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, execution, and delivery of the Note, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Clerk are hereby 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 14:** That in the event any title, section, paragraph, item, sentence, clause, phrase, or word of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not be affect the remaining portions of this Ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

**SECTION 15:** That all ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 16:** That funds provided through the issuance of the Promissory Note are hereby appropriated and budgetary authority is provided for the Projects in an amount up to \$6,500,000.

**SECTION 17:** That funds provided be appropriated from General Fund Proceeds of Promissory Note revenue account (001.109.4612) into General Fund airport CIP project account (001.109.5990) as Projects are awarded, money is borrowed and received for the Projects in an amount up to \$6,500,000.

**SECTION 18:** This ordinance is necessary for the protection of the public peace, health and safety and that in order to avoid project delays to this Project, it is essential to the ability of the City to efficiently conduct business and have the necessary funds to pay for this Project and therefore, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

Passed on this 9<sup>th</sup> day of July, 2013.

Approved:



Mayor Tab Townsell

Attest:



Michael O. Garrett  
City Clerk/Treasurer

