

ORDINANCE NO. 1800

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REFUNDING BONDS FOR THE PURPOSE OF REFINANCING THE COST OF CAPITAL IMPROVEMENTS; PLEDGING TWO 1% SALES AND USE TAXES TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Eureka Springs, Arkansas (the "City") has determined that in order to receive debt service savings it is in the best interest of the City to refund the City's outstanding Sales and Use Tax Refunding Bonds, Series 1993, in the outstanding principal amount of \$1,305,000 (the "1993 Bonds") authorized by Ordinance No. 1449 of the City, adopted August 1, 1991, as supplemented by Ordinance No. 1530 of the City, adopted May 25, 1993 (collectively, the "1993 Ordinance"); and

WHEREAS, the 1993 Bonds were approved by the voters at the special election held July 2, 1991 in order to finance capital improvements to the City's water and sewer system and recycling center (the "1993 Improvements"); and

WHEREAS, the City can obtain the necessary funds for the refunding of the 1993 Bonds (the "refunding") by the issuance of Sales and Use Tax Refunding Bonds, Series 1998, in the aggregate principal amount of \$1,145,000 (the "Series 1998 Bonds") and by appropriating available moneys held pursuant to the 1993 Ordinance; and

WHEREAS, the City has made arrangements for the sale of the Series 1998 Bonds to Stephens Inc. and Sterne, Agee & Leach, Inc. (collectively, the "Purchaser"), at a price of 98% of par plus accrued interest (the "Purchase Price"), pursuant to a Bond Purchase Agreement between the Purchaser and the City (the "Agreement"), which has been presented to and is before this meeting; and

WHEREAS, the Preliminary Official Statement, dated September 29, 1998, offering the Series 1998 Bonds for sale (the "Preliminary Official Statement"), has been presented to and is before this meeting; and

WHEREAS, the Continuing Disclosure Agreement between the City and First Arkansas Bank & Trust, Jacksonville, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the

Series 1998 Bonds, has been presented to and is before this meeting; and

WHEREAS, the City has outstanding its Sales and Use Tax Refunding Bonds, Series 1994 (the "Series 1994 Bonds"), authorized by Ordinance No. 1567 of the City, adopted February 8, 1994 (the "1994 Ordinance"), which Series 1994 Bonds refunded the City's Sales and Use Tax Bonds, Series 1991, the proceeds of which also financed improvements to the City's water and sewer system and recycling center, and which Series 1994 Bonds are secured by a pledge of the tax collections hereinafter pledged to the Series 1998 Bonds; and

WHEREAS, the Series 1998 Bonds are being issued pursuant to Section 10 of the 1994 Ordinance as "Additional Parity Bonds" thereunder;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Eureka Springs, Arkansas:

Section 1. The outstanding 1993 Bonds shall be called for redemption on December 1, 1998 and the Mayor is hereby authorized to direct First United Trust Company, N.A. (the "1993 Trustee") to redeem the 1993 Bonds on such date.

Section 2. The offer of the Purchaser for the purchase of the Series 1998 Bonds from the City at the Purchase Price, for Series 1998 Bonds bearing interest at the rates per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby accepted and the Agreement, in substantially the form submitted to this meeting, is approved and confirmed and the Series 1998 Bonds are hereby sold to the Purchaser. The Mayor is hereby authorized and directed to execute and deliver the Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Agreement.

Section 3. The Preliminary Official Statement is hereby approved and the previous use of the Preliminary Official Statement by the Purchaser in connection with the sale of the Series 1998 Bonds is hereby in all respects approved and confirmed, and the Mayor be and she hereby is authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City to be delivered to the Purchaser for use in connection with the sale of the Series 1998 Bonds as set forth in the Agreement.

Section 4. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly Amendment No. 62 to the Constitution of the State and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated, City of Eureka Springs, Arkansas Sales and Use Tax Refunding Bonds, Series 1998 are hereby authorized and ordered issued in the total principal amount of \$1,145,000, the proceeds of the sale of which are necessary, along with available funds appropriated hereby, to provide sufficient funds for accomplishing the refunding, paying expenses incidental thereto and paying expenses of issuing the Series 1998 Bonds.

The Series 1998 Bonds shall bear interest at the rates and shall mature on December 1 in the amounts and in the years as follows:

<u>Year</u> <u>(December 1)</u>	<u>Amount</u>	<u>Interest Rate</u>
1999	\$65,000	3.60%
2000	65,000	3.70
2001	70,000	3.80
2002	70,000	3.90
2003	70,000	3.95
2004	75,000	4.00
2005	80,000	4.05
2006	85,000	4.10
2007	85,000	4.15
2008	85,000	4.20
2009	95,000	4.25
2010	100,000	4.30
2011	100,000	4.35
2012	100,000	4.40

The Series 1998 Bonds shall be issuable only as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Unless the City shall otherwise direct, the Series 1998 Bonds shall be numbered from 1 upward in order of issuance. Each Series 1998 Bond shall have a CUSIP number.

Each Series 1998 Bond shall be dated December 1, 1998. Interest on the Series 1998 Bonds shall be payable on June 1, 1999, and semiannually thereafter on June 1 and December 1 of each year. Payment of each installment of interest shall be made to the person in whose name the Series 1998 Bond is registered on the

registration books of the City maintained by First Arkansas Bank & Trust (formerly First Jacksonville Bank & Trust), Jacksonville, Arkansas, as Trustee and Paying Agent (the "Trustee"), at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such Series 1998 Bond subsequent to such Record Date and prior to such interest payment date, by check or draft mailed by the Trustee to such owner at his address on such registration books. Principal of the Series 1998 Bonds shall be payable at the corporate trust office of the Trustee.

Each Series 1998 Bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from December 1, 1998, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such Series 1998 Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 6 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No Series 1998 Bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate of the Trustee upon any such Series 1998 Bond shall be conclusive evidence that such Series 1998 Bond has been authenticated and delivered under this Ordinance. The Certificate shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the Series 1998 Bonds.

In case any Series 1998 Bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new Series 1998 Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Series 1998 Bond, or in lieu of and in substitution for such Series 1998 Bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City and Trustee in

connection therewith, and, in the case of a Series 1998 Bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such Series 1998 Bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Series 1998 Bond. In the event any such Series 1998 Bond shall have matured, instead of issuing a new Series 1998 Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Series 1998 Bond under this Section, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The City shall cause books for the registration and for the transfer of the Series 1998 Bonds as provided herein and in the Series 1998 Bonds. The Trustee shall act as the bond registrar. Each Series 1998 Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered Series 1998 Bond or Bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

Series 1998 Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of Series 1998 Bonds of any other authorized denomination or denominations. The City shall execute and the Trustee shall authenticate and deliver Series 1998 Bonds which the registered owner making the exchange is entitled to receive. The execution by the City of any Series 1998 Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall be thereby authorized to authenticate and deliver such Series 1998 Bond.

Section 5. The Series 1998 Bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City.

Section 6. The Series 1998 Bonds and the Certificate shall be in substantially the following form and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Series 1998 Bond)

REGISTERED

REGISTERED

No. _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF CARROLL
CITY OF EUREKA SPRINGS
SALES AND USE TAX REFUNDING BOND
SERIES 1998

Interest Rate: ____% Maturity Date: December 1, ____

Dated Date: December 1, 1998

Registered Owner: _____

Principal Amount: _____ Dollars

CUSIP No.: _____

KNOW ALL MEN BY THESE PRESENTS:

That the City of Eureka Springs, County of Carroll, State of Arkansas (the "City"), for value received, hereby promises to pay to the Registered Owner shown above upon the presentation and surrender hereof at the principal corporate trust office of First Arkansas Bank & Trust, Jacksonville, Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee"), on the Maturity Date shown above, the Principal Amount shown above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and to pay by check or draft to the Registered Owner shown above interest thereon, in like coin or currency from the interest commencement date specified below at the Interest Rate per annum shown above, payable on each June 1 and December 1 after the Dated Date shown above, until payment of such Principal Amount or, if this bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this bond. Payment of each installment of interest shall be made to the person in whose name this bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this bond subsequent to such Record Date and prior to such interest payment date.

This bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from the Dated Date shown above, or unless at the time of authentication hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

This bond is one of an issue of City of Eureka Springs, Arkansas Sales and Use Tax Refunding Bonds, Series 1998, aggregating One Million One Hundred Forty-Five Thousand Dollars (\$1,145,000) in aggregate principal amount (the "bonds"), and is issued for the purpose of refunding certain outstanding bonds of the City (the "bonds refunded"), paying necessary expenses incidental thereto, and paying expenses of authorizing and issuing the bonds.

The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), particularly Amendment No. 62 to the Constitution of the State and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. 1567 of the City duly adopted on February 8, 1994 and Ordinance No. _____ of the City duly adopted on October 13, 1998 (collectively, the "Authorizing Ordinance"), and an election duly held at which the majority of the legal voters of the City voting on the questions approved the issuance of the bonds refunded. Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security, of the issuance of additional series and of the rights and obligations of the City, the Trustee and the registered owners of the bonds. The bonds are special obligations of the City, payable from the proceeds derived by the City from its two 1% sales and use taxes (the "Taxes") levied by the City under the authority of the laws of the State and Ordinance No. 1120 of the City duly adopted on May 12, 1981 and Ordinance No. 1386 of the City duly adopted on March 20, 1990 and the City hereby pledges its collections of the Taxes for the payment of this bond. The pledge in favor of the bonds is on a parity with the pledge in favor of the City's Sales and Use Tax Refunding Bonds, Series 1994. The City has reserved the right in the Authorizing Ordinance to issue additional bonds under the Authorizing Ordinance on a parity of security with the bonds.

(REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND ON THE REVERSE SIDE HEREOF WHICH HAVE THE SAME EFFECT AS IF SET FORTH IN THIS PLACE.)

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF SECTION 265 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

IN WITNESS WHEREOF, the City of Eureka Springs, Arkansas has caused this bond to be executed by its Mayor and City Clerk, their facsimile signatures thereunto duly authorized and its corporate seal to be impressed or imprinted on this bond, all as of the Dated Date shown above.

CITY OF EUREKA SPRINGS, ARKANSAS

ATTEST:

(Facsimile signature)
City Clerk

By (Facsimile signature)
Mayor

(SEAL)

(Reverse Side of Bond)

STATE OF ARKANSAS
COUNTY OF CARROLL
CITY OF EUREKA SPRINGS
SALES AND USE TAX REFUNDING BOND
SERIES 1998

The bonds may be redeemed at the option of the City on and after December 1, 2003, from funds from any source, in whole at any time or in part on any interest payment date, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine) at a redemption price equal to the principal amount being redeemed, plus accrued interest to the redemption date.

In case any outstanding bond is in a denomination greater than \$5,000, each \$5,000 of face value of such bond shall be treated as a separate bond of the denomination of \$5,000.

Notice of redemption identifying the bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed and the date they shall be presented for payment shall be

given by the Trustee, not less than 30 nor more than 60 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to all registered owners of bonds to be redeemed. Failure to mail an appropriate notice or any such notice to one or more registered owners of bonds to be redeemed shall not affect the validity of the proceedings for redemption of other bonds as to which notice of redemption is duly given in proper and timely fashion. All such bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date.

This bond is transferable by the Registered Owner shown above in person or by his attorney-in-fact duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this bond. Upon such transfer a new fully registered bond or bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. This bond is issued with the intent that the laws of the State shall govern its construction.

The City and the Trustee may deem and treat the Registered Owner shown above as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The bonds are issuable only as fully registered bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, fully registered bonds may be exchanged for a like aggregate principal amount of fully registered bonds of the same maturity of other authorized denominations.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed, under the Constitution and laws of the State, particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, precedent to and in the issuance of this bond have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness

represented by this bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that the Taxes will be duly levied until all of the bonds and interest thereon have been fully paid and discharged.

This bond shall not be valid until it shall have been authenticated by the Certificate hereon duly signed by the Trustee.

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds issued under the provisions of the within mentioned Authorizing Ordinance.

Date of Authentication: _____.

FIRST ARKANSAS BANK & TRUST
Jacksonville, Arkansas
TRUSTEE

By _____
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, _____ ("Transferor"), hereby sells, assigns and transfers unto _____, the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ as attorney to transfer the within bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: _____

Transferor

GUARANTEED BY:

NOTICE: Signature(s) must be guaranteed by a member of or participant in the Securities Transfer Agents Medallion Program (STAMP), or in another signature guaranty program recognized by the Trustee.

Section 7. The City hereby expressly pledges and appropriates all of the revenues derived by the City from its two 1% sales and use taxes (the "Taxes") levied by the City under the authority of the laws of the State and Ordinance No. 1120 of the City duly adopted on May 12, 1981 and Ordinance No. 1386 of the City duly adopted on March 20, 1990 and confirmed by the 1994 Ordinance, to the payment of the principal of and interest on the Series 1998 Bonds when due at maturity or at redemption prior to maturity and to the payment of the fees and charges of the Trustee on a parity of security with the Series 1994 Bonds. The Series 1998 Bonds are being issued as Additional Parity Bonds under the 1994 Ordinance and shall be a part of "the bonds" within the meaning of such ordinance. In this regard, all provisions of the 1994 Ordinance pertaining to "the bonds" shall inure and appertain to the Series 1998 Bonds to the same extent and with like force and effect as if herein set out in full. The effect of the above provisions shall be to continue the applicable provisions of the 1994 Ordinance in full force and effect even after the Series 1994 Bonds are paid or provision made therefor.

Section 8. The Series 1998 Bonds shall be callable for payment prior to maturity in accordance with the terms set out in the face of the bond form set forth in Section 6 of this Ordinance.

Section 9. When the Series 1998 Bonds have been executed by the Mayor and City Clerk and the seal of the City impressed or imprinted as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to the Purchaser upon payment of the Purchase Price. The accrued interest shall be deposited in the 1994 Sales and Use Tax Bond Fund (the "1994 Bond Fund") established by the 1994 Ordinance. The expenses of issuing the Series 1998 Bonds as set forth in letter instructions of the City signed by the Mayor and City Clerk shall be paid from the Purchase Price.

An amount of the Purchase Price that is sufficient, along with other moneys set aside and appropriated hereby for such purpose, to accomplish the refunding shall be deposited with the 1993 Trustee, as escrow agent.

The balance of the Purchase Price, if any, shall be deposited in a special account of the City hereby created and designated the "1998 Cost of Issuance Fund" (the "Cost of Issuance Fund") in the Trustee. The moneys in the Cost of Issuance Fund shall be used for paying expenses for the refunding and issuing the Series 1998 Bonds. Disbursements shall be made from the Cost of

Issuance Fund on the basis of requisitions which shall specify: the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; the purpose of the payment; and that the payment is a proper charge on the Cost of Issuance Fund. Each requisition must be signed by the Mayor and City Clerk.

When all required expenses have been paid from the Cost of Issuance Fund, and if any funds remain therein at the time, this fact shall be evidenced by a certificate signed by the Mayor, which certificate shall state that all obligations payable from the Cost of Issuance Fund have been discharged as of a specified date. A copy of the certificate shall be filed with the Trustee, and upon receipt thereof the Trustee shall transfer any remaining balance in the Cost of Issuance Fund to the 1994 Bond Fund.

Section 10. The Series 1998 Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of the Internal Revenue Code of 1986, as amended (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 1998 will not exceed \$10,000,000. The City further represents that it does not reasonably expect that it and all subordinate entities will issue tax-exempt obligations (not including "private activity bonds" within the meaning of Section 141 of the Code) in amounts exceeding \$5,000,000 in calendar year 1998. The City covenants that at least 95% of the net proceeds of the 1993 Bonds were used to accomplish the 1993 Improvements.

Section 11. 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 Series 1998 Bonds are issued, a statement concerning the Series 1998 Bonds which contains the information required by Section 149(e) of the Code.

Section 12. All moneys in the 1991 Sales and Use Tax Bond Fund created by the 1993 Ordinance are hereby appropriated and shall be used as necessary to accomplish the refunding. Any balance shall be deposited into the 1994 Bond Fund.

Section 13. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the

Disclosure Agreement for and on behalf of the City. The Mayor is authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement.

Section 14. The provisions of this Ordinance are separable and in the event that any section or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of this Ordinance.

Section 15. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: October 13, 1998.

ATTEST:

Mary Ann Lee
City Clerk

APPROVED:

Barbara O'Harris
Mayor

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Eureka Springs, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 1800, passed at a regular session of the City Council of the City, held at the regular meeting place of the Council at 9:00 o'clock a.m on the 13th day of October, 1998, and that the Ordinance is of record in Ordinance Record Book No. at Page , now in my possession.

GIVEN under my hand and seal this 13th day of October, 1998.

Mary Ann Lee
City Clerk

(SEAL)