

ORDINANCE NO. 1449

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

WHEREAS, there was submitted to the qualified electors of the City of Eureka Springs, Arkansas (the "City") the questions of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas and under Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), capital improvement bonds in the maximum principal amount of \$5,485,000 for the purpose of financing the cost to the City of constructing extensions, betterments and improvements to the City's water and sewer system and recycling center (the "Improvements"); and

WHEREAS, at the special election held July 2, 1991, a majority of the electors voting on the questions approved the issuance of such bonds; and

WHEREAS, the City Council has determined to proceed with the first phase of the Improvements and to issue the first series of bonds designated "Series 1991" (the "Series 1991 Bonds") in the aggregate principal amount of \$3,855,000 for the following purposes: \$2,415,000 for the Improvements relating to water; \$1,175,000 for the Improvements relating to sewer; and \$265,000 for the Improvements relating to the recycling center; and

WHEREAS, the City has made arrangements for the sale of \$3,855,000 in aggregate principal amount of Series 1991 Bonds to Hill, Crawford & Lanford Incorporated and Stephens Inc. (collectively, the "Purchaser"), at a price of 97.5% 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 July 19, 1991, offering the Series 1991 Bonds for sale (the "Preliminary Official Statement"), has been presented to and is before this meeting;

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

Section 1. That the first phase of the Improvements be accomplished, and the Mayor and City Clerk are hereby authorized to take all action necessary in connection therewith and to execute all required contracts and documents.

Section 2. That the offer of the Purchaser for the purchase of \$3,855,000 in principal amount of Series 1991 Bonds from the City at the Purchase Price, for Series 1991 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 1991 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. That 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 1991 Bonds is hereby in all respects authorized, approved and confirmed, and the Mayor be and he 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 1991 Bonds as set forth in the Agreement.

Section 4. That 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 the Authorizing Legislation, City of Eureka Springs, Arkansas Sales and Use Tax Bonds, Series 1991 are hereby authorized and ordered issued in the total principal amount of \$3,855,000 the proceeds of the sale of which are necessary to provide sufficient funds for accomplishing the first phase of the Improvements, paying expenses incidental thereto, establishing a debt service reserve and paying expenses of issuing the Series 1991 Bonds. The Series 1991 Bonds and any Additional Parity Bonds issued under Section 10 hereof are referred to herein collectively as the "bonds".

The Series 1991 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>
1992	\$ 105,000	5.000%
1993	110,000	5.150
1994	115,000	5.350
1995	120,000	5.500
1996	130,000	5.750
1997	135,000	5.900
1998	145,000	6.000
1999	155,000	6.100
2000	165,000	6.200
2001	175,000	6.300
2002	185,000	6.400
2003	195,000	6.500
2004	210,000	6.600
2011	1,910,000	6.875

The Series 1991 Bonds shall bear interest from their respective dates and the Series 1991 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 1991 Bonds shall be numbered from 1 upward in order of issuance. Each Series 1991 Bond shall have a CUSIP number but the failure of a CUSIP number to appear on any Series 1991 Bond shall not affect its validity.

Each Series 1991 Bond shall be dated as of the interest payment date to which interest has been paid as of the date on which it is authenticated or if it is authenticated prior to a date on which interest has been paid, it shall be dated September 1, 1991. Interest on the Series 1991 Bonds shall be payable on June 1, 1992, 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 1991 Bond is registered on the registration books of the City maintained by First National Bank in Stuttgart, Stuttgart, 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 1991 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 1991 Bonds shall be payable at the corporate trust office of the Trustee in Stuttgart, Arkansas.

Only such Series 1991 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 1991 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 1991 Bond shall be conclusive evidence that such Series 1991 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 1991 Bonds.

In case any Series 1991 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 1991 Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Series 1991 Bond, or in lieu of and in substitution for such Series 1991 Bond destroyed or lost, upon the owner's paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a Series 1991 Bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such Series 1991 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 1991 Bond. In the event any such Series 1991 Bond shall have matured, instead of issuing a new Series 1991 Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Series 1991 Bond under this Section 4, 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 1991 Bonds as provided herein and in the Series 1991 Bonds. The Trustee shall act as the bond registrar. Each Series 1991 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 1991 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 1991 Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of Series 1991 Bonds of any other authorized denomination or denominations. The City shall execute and the Trustee shall authenticate and deliver Series 1991 Bonds which the registered owner making the exchange is entitled to receive. The

execution by the City of any Series 1991 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 1991 Bond.

No charge shall be made to any owner of any bond for the privilege of transfer or exchange, but any owner of any bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. Neither the Trustee nor the City shall be required (i) to issue, transfer or exchange any bond during a period beginning at the opening of business 15 days before any selection of bonds of that maturity for redemption and ending at the close of business on the day of the first mailing of the relevant notice of redemption, or (ii) to transfer or exchange any bonds selected for redemption in whole or in part.

The person in whose name any bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest on any bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the bonds or the date fixed for redemption of any bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day not a Saturday or Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Section 5. That the 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. That the Series 1991 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 Bond)

REGISTERED

REGISTERED

No. _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF CARROLL
CITY OF EUREKA SPRINGS
SALES AND USE TAX BOND
SERIES 1991

Interest Rate: _____% Maturity Date: December 1, _____ Dated Date: _____
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 National Bank in Stuttgart, Stuttgart, Arkansas, or its successor or successors, as Trustee and Paying Agent (herein referred to as 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 Dated Date shown above at the Interest Rate per annum shown above, payable on each June 1 and December 1 after the Dated Date shown above (except December 1, 1991), 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 is one of an issue of City of Eureka Springs, Arkansas Sales and Use Tax Bonds, Series 1991, aggregating Three Million Eight Hundred Fifty-Five Thousand Dollars (\$3,855,000) in aggregate principal amount (the "bonds"), and is issued for the purpose of financing the costs of capital improvements to the City's water and sewer system and recycling center, paying necessary expenses incidental thereto, establishing a debt service reserve 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 an ordinance of the City duly adopted (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. 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 (the "1981 Tax") and Ordinance No. 1386 of the City duly adopted on March 20, 1990 (the "1990 Tax") and the City hereby pledges its collections of the Taxes for the payment of this bond as follows: 2/3 of collections of the 1990 Tax received in calendar year 1991-1994; 100% of collections of the 1990 Tax received in 1995 and thereafter; and 100% of all collections of the 1981 Tax. 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 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, lithographed 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 BOND
SERIES 1991

The bonds are subject to extraordinary, optional and mandatory sinking fund redemption prior to maturity as follows:

(1) The bonds shall be redeemed by the City from proceeds of the bonds not needed for the purposes intended on any interest payment date, in whole or in part, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine).

(2) The bonds may be redeemed at the option of the City on and after December 1, 1998, from funds from any other 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 redemption prices (expressed as percentages of the principal amount being redeemed), plus accrued interest to the redemption date as follows:

<u>Redemption Date</u>	<u>Redemption Premium</u>
December 1, 1998 to November 30, 1999	102%
December 1, 1999 to November 30, 2000	101%
December 1, 2000 and thereafter	100%

(3) To the extent not previously redeemed, the bonds maturing December 1, 2011 are subject to mandatory sinking fund redemption to be selected by lot, in such manner as the Trustee

shall determine, on December 1 in the years and amounts set forth below, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption (without premium):

Bonds Maturing December 1, 2011

<u>Year</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Year</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>
2005	\$220,000	2009	\$290,000
2006	235,000	2010	310,000
2007	255,000	2011	330,000
2008	270,000		

The provisions for mandatory sinking fund redemption of the bonds are subject to the provisions of the Authorizing Ordinance which permit the City to receive credit for bonds previously redeemed or for bonds acquired by the City and surrendered to the Trustee.

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 thirty (30) nor more than sixty (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 a tax sufficient to pay the bonds and interest thereon has been duly levied in accordance with the Authorizing Legislation and made payable annually 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.

FIRST NATIONAL BANK IN STUTTGART
Stuttgart, 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 on 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 firm of the New York Stock Exchange or a commercial bank or a trust company.

Section 7. (a) The City hereby confirms and relieves each of its city-wide 1% sales and use taxes levied pursuant to Ordinance No. 1120 of the City, adopted May 12, 1981 and approved by a majority of the electors of the City voting on the question at the special election held June 23, 1981 (the "1981 Tax") and Ordinance No. 1386 of the City, adopted March 20, 1990 and approved by a majority of the electors of the City voting on the question at the special election held May 1, 1990 (the "1990 Tax"), under and in accordance with Title 26, Chapter 75, Subchapters 2 and 3 of the Arkansas Code of 1987 Annotated (collectively, the "Taxes"). The sales tax portion of each of the Taxes shall be levied each at the rate of 1% on the receipts from the sale at retail within the City of all items which are subject to taxation under the Arkansas Gross Receipts Tax Act of 1941, as amended (A.C.A. §26-52-101, et seq.). The use tax portion of each of the Taxes shall be levied each at the rate of 1% on the receipts on the sale price or lease or rental price on the storage, use or other consumption of all taxable items within the City which property is subject to the Arkansas Compensating (Use) Tax Act, as amended (A.C.A. §26-53-101, et seq.). Each of the Taxes shall each be levied and collected only to a maximum tax of \$25 per each Tax for each "single transaction" as such term is defined by ordinance of the City.

(b) The City hereby expressly pledges and appropriates all of the revenues derived by the City from the Taxes to the payment of the principal of and interest on the bonds when due and to the payment of the fees and charges of the Trustee as follows: 2/3 of the collections of the 1990 Tax received in calendar year 1991-1994; 100% of collections of the 1990 Tax received in 1995 and thereafter; 100% of all collections of the 1981 Tax. Such revenues

pledged to the payment of the bonds are hereafter referred to as the "Pledged Revenues." The City covenants that the Taxes shall never be repealed or reduced while any of the bonds are outstanding. The City further covenants to use due diligence in collecting the Taxes. Nothing herein shall prohibit the City from increasing the Taxes from time to time, to the extent permitted by law, and no part of the revenues derived from any such increase shall become part of the Pledged Revenues.

Section 8. (a) That the City Treasurer shall deposit into a special fund in the name of the City which is hereby created and established with the Trustee and designated "1991 Sales and Use Tax Bond Fund" (the "Bond Fund") from Pledged Revenues the sums in the amounts and at the times described below for the purpose of providing funds for the payment of the principal of and interest on the bonds, as they mature, with Trustee's fees, and as a debt service reserve. There shall be deposited into the Bond Fund on the fifteenth day of each month, commencing December 15, 1991, until all outstanding bonds, with interest thereon, have been paid in full or provision made for such payment a sum equal to 1/6 of the next installment of the interest due on the bonds and 1/12 of the next installment of the principal due on the bonds (whether at maturity or upon mandatory sinking fund redemption prior to maturity).

The City shall also pay into the Bond Fund such additional sums as necessary to provide for the Trustee's fees and expenses. The City shall receive a credit against monthly payments to the extent of interest earnings on moneys in the Bond Fund and transfers of earnings from the Debt Service Reserve Account hereinafter identified.

(b) There shall be established and maintained in the Bond Fund a Debt Service Reserve Account in an amount equal to the maximum annual debt service requirement for the bonds or 10% of the original proceeds of the bonds, whichever is lesser (the "required level"). The City shall deposit proceeds of the Series 1991 Bonds in the Debt Service Reserve Account pursuant to Section 15 hereof. Should the Debt Service Reserve Account be reduced below the required level, the deficiency shall be cured by an additional monthly payment equal to one-twelfth of the deficiency until the reduction is corrected. Moneys in the Debt Service Reserve Account over and above the required level shall be immediately transferred from the Debt Service Reserve Account into the Bond Fund.

(c) The amount required to be paid into the Bond Fund shall be paid before any of the Pledged Revenues are used for any other purpose. If the Pledged Revenues are insufficient to make the required payment on the fifteenth day of the following month into the Bond Fund, the amount of any such deficiency in the

payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the fifteenth day of the next month.

(d) If for any reason there shall be a deficiency in the payments made into the Bond Fund so that there are unavailable sufficient moneys therein to pay the principal of and interest on, the bonds as the same become due, any sums then held in the Debt Service Reserve Account shall be used to the extent necessary to pay such principal, interest and Trustee's fees, but the Debt Service Reserve Account shall be reimbursed in the amount of any such payment as described above.

(e) When the moneys in the Bond Fund, including the Debt Service Reserve Account, shall be and remain sufficient to pay (1) the principal of all the bonds then outstanding, (2) interest on the bonds until the next interest payment date, and (3) the Trustee's fees and expenses, there shall be no obligation to make any further payments into the Bond Fund and any Pledged Revenues remaining in the Bond Fund after the principal of, premium, if any and interest on the bonds have been paid may be used by the City for any lawful purpose.

(f) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bonds, and Trustee's fees, as the same become due.

(g) The Trustee is authorized and directed to withdraw moneys from the Bond Fund from time to time as necessary for paying principal of and interest on the bonds when due at maturity or at redemption prior to maturity and for making other authorized Bond Fund expenditures.

(h) The bonds shall be specifically secured by a pledge of the Pledged Revenues, which pledge in favor of the bonds is hereby irrevocably made according to the terms of this Ordinance, and the City, and the officers and employees of the City, shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

(i) Nothing in this Ordinance shall be construed as prohibiting the City from appropriating funds to the extent that they may be legally appropriated and used for the payment of principal of and interest on the bonds if moneys in the Bond Fund (including the Debt Service Reserve Account) are not sufficient on any interest payment date to make the principal and interest payment then due, and such amounts legally appropriated and available for that purpose shall be paid to the Trustee for deposit into the Bond Fund and used for that purpose.

Section 9. That any bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) moneys sufficient to make such payment and/or (2) Government Securities as defined in Section 16 hereof which are direct obligations of the United States of America (provided that such deposit will not cause any of the bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code")), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of all such bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such bonds, all such moneys and/or Government Securities.

When all the bonds shall have been paid within the meaning of this Ordinance, and if the Trustee has been paid its fees and expenses, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such bonds to be paid over or delivered to or at the direction of the City.

Section 10. That the City covenants that it will not issue any bonds, or incur any obligation, secured by a lien on or pledge of the Pledged Revenues except as authorized in this Section 10. The City may issue bonds or incur obligations on a parity of security with the Series 1991 Bonds ("Additional Parity Bonds") under the provisions of this Ordinance if Pledged Revenues for the preceding twelve consecutive months are in excess of 125% of the average annual debt service requirements for the Series 1991 Bonds, any outstanding Additional Parity Bonds and the Additional Parity Bonds proposed to be issued.

Section 11. That the Series 1991 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. Additional Parity Bonds shall be subject to redemption prior to maturity in accordance with the terms set forth in the ordinance or ordinances authorizing their issuance. The City

hereby covenants to use Series 1991 Bond proceeds not necessary for the purposes intended to redeem Series 1991 Bonds on the first available interest payment date. The City covenants and agrees to cause to be paid into the Bond Fund sufficient funds to redeem bonds subject to mandatory sinking fund redemption in the amounts and on the dates set forth in the bonds.

The City may acquire bonds by purchase at a price not in excess of par plus accrued interest, inclusive of brokerage fees, and surrender to the Trustee any bonds so acquired, in exchange for which the City shall receive a credit under this Ordinance in an amount equal to the principal amount of the bonds so acquired and surrendered, for and of the then next date for mandatory sinking fund redemption of bonds of the same maturity.

Section 12. That it is hereby covenanted and agreed by the City with the owners of the bonds that the City will faithfully and punctually perform all duties with reference to the Taxes and the bonds required by the Constitution and laws of the State and by this Ordinance, including the collection of the Taxes, as herein specified and covenanted and the applying of the Pledged Revenues as herein provided.

Section 13. That the City Treasurer will keep or cause to be kept proper books of accounts and records (separate from all other accounts and records) in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues and the Taxes and such books shall be available for inspection by the Trustee, the Purchaser and the owner of any of the bonds at reasonable times and under reasonable circumstances. Upon the written request by the Trustee, the City shall furnish a report to the Trustee on a monthly basis of all receipts and transfers of the Pledged Revenues and collections of the Taxes received by the City Treasurer. The Trustee shall provide the City with a semiannual report of all transactions relating to the Bond Fund (and Debt Service Reserve Account therein), which semiannual report shall commence in December, 1991.

Section 14. (a) That if there be any default in the payment of the principal of and interest on any of the bonds, or if the City defaults in the performance of any covenant contained in this Ordinance, the Trustee may, and shall, upon the written request of the owners of not less than 10% in principal amount of the bonds then outstanding, by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the State and under this Ordinance, and to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State.

(b) No owner of any bond shall have any right to institute any suit, action, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more owners of the bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of the outstanding bonds, and that any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) All rights of action under this Ordinance or under any of the bonds, enforceable by the Trustee, may be enforced by it without the possession of any of the bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name and for the benefit of all the owners of the bonds, subject to the provisions of this Ordinance.

(d) No remedy herein conferred upon or reserved to the Trustee or to the owners of the bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law or by the Constitution of the State.

(e) No delay or omission of the Trustee or of any owners of the bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed

to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to the Trustee and to the owners of the bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(f) The Trustee may, and upon the written request of the owners of not less than a majority of the owners in principal amount of the bonds then outstanding shall waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 15. That when the Series 1991 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 Bond Fund. An amount of the Purchase Price necessary for the purpose of funding the Debt Service Reserve Account shall be deposited into such account. The expenses of issuing the Series 1991 Bonds as set forth in letter instructions of the City signed by the Mayor and City Clerk shall be paid from the Purchase Price.

The balance of the Purchase Price shall be deposited in a special account of the City hereby created and designated the "1991 Capital Improvement Construction Fund" (the "Construction Fund") in a bank or banks selected by the City that are members of the Federal Deposit Insurance Corporation ("FDIC"). The moneys in the Construction Fund shall be used for accomplishing the Improvements, paying expenses incidental thereto and paying the expenses of issuing the Series 1991 Bonds, with any unexpended balance to be deposited in the Bond Fund. Disbursements shall be made from the Construction Fund on the basis of checks or 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 Construction Fund. Each check or requisition must be signed by two persons designated by the City Council and shall be accompanied by a certificate signed by the Mayor and certifying his approval thereof. In the case of requisitions, the depository shall issue its check upon the Construction Fund payable to the person, firm or corporation designated in the requisition. The depository of the Construction Fund shall be required to keep records as to all payments made on the basis of requisitions.

When the Improvements have been completed and all required expenses paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof, this fact shall be evidenced by a certificate signed by the Mayor, which certificate shall state, among other things, the date of the completion and that all obligations payable from the Construction Fund have been discharged. A copy of the certificate shall be filed with the depository of the Construction Fund, and a copy with the Trustee, and upon receipt thereof the depository of the Construction Fund shall transfer any remaining balance to the Bond Fund.

Section 16. (a) That moneys held for the credit of the Debt Service Reserve Account in the Bond Fund shall be invested and reinvested in direct or fully guaranteed obligations of the United States of America (including any such securities issued or held in book-entry form on the books of the Department of the Treasury of the United States of America) ("Government Securities") or in time deposits or certificates of deposit of banks, including the Trustee, which are insured by FDIC, or, if in excess of insurance coverage, collateralized by Government Securities, all of which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than five (5) years after the date of investment or the final maturity date of the outstanding bonds, whichever is earlier. The Trustee shall so invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(b) Moneys held for the credit of the Construction Fund may be invested and reinvested pursuant to the direction of the City in Government Securities, in time deposits or certificates of deposit of banks, including the Trustee, which are members of FDIC, or other investments as may, from time to time, be permitted by law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(c) Moneys held for the credit of the Bond Fund (other than the Debt Service Reserve Account) shall be invested and reinvested in Government Securities, or in time deposits or certificates of deposit of banks, including the Trustee, which are insured by FDIC, or, if in excess of insurance coverage, are collateralized by Government Securities, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys will be required for payment of the principal of and interest on the bonds when due. The Trustee shall invest and

reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(d) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund, except that interest earnings and profits on investments of moneys in the Debt Service Reserve Account in the Bond Fund which increase the amount thereof above the required level shall be transferred from time to time out of the Debt Service Reserve Account into the Bond Fund and used on the next interest payment date to provide the necessary funds to pay the principal of and interest on the bonds when due.

(e) Moneys so invested in Government Securities or in certificates of deposit of banks to the extent insured by FDIC need not be secured by the Trustee or by the depository bank.

(f) All investments and deposits shall have a par value (or market value when less than par), exclusive of accrued interest at all times at least equal to the amount of money credited to such funds and shall be made in such a manner that the money required to be expended from any fund will be available at the proper time or times.

(g) Investments of moneys in all funds shall be valued in terms of current market value as of the first day of each year, except that direct obligations of the United States (State and Local Government Series) in book-entry form shall be continuously valued at par or face principal amount.

Section 17. That in the event the office of Mayor, City Clerk, City Council or City Treasurer shall be abolished or any two or more of such offices shall be merged or consolidated or in the event the duties of a particular office shall be transferred to another office or offices, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officers succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law.

Section 18. That First National Bank in Stuttgart, Stuttgart, Arkansas is hereby appointed to act as Trustee and Paying Agent pursuant to this Ordinance. The Trustee shall be responsible for the exercise of good faith and reasonable prudence

in the execution of its trusts. The recitals in this Ordinance and in the bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the owners of not less than 10% in principal amount of bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign by giving 60 days' notice in writing to the City Clerk and to the owners of the bonds, and the majority in principal amount of the owners of the outstanding bonds at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, the majority in principal amount of the owners of the outstanding bonds may appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the City Clerk. If the majority in principal amount of the owners of the outstanding bonds shall fail to fill a vacancy within 30 days after the same shall occur, then the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Clerk. The new Trustee shall be a bank or a trust company in good standing located in or incorporated under the laws of the State, duly authorized to exercise trust powers and subject to examination by federal or State authority, having a reported capital and surplus of not less than \$5,000,000. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the bonds agree. Such written acceptance shall be filed with the City Clerk, and a copy thereof shall be placed in the bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee. The Trustee's resignation shall take effect upon the acceptance of the trusts by the successor Trustee.

Section 19. (a) That the terms of this Ordinance shall constitute a contract between the City and the owners of the bonds and no variation or change in the undertaking herein set forth shall be made while any of the bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(b) The Trustee may consent to any variation or change in this Ordinance in connection with the issuance of Additional Parity Bonds or in order to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto without the consent of the owners of the outstanding bonds.

(c) The owners of not less than 75% in aggregate principal amount of the bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to

the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any bond, or (2) a reduction in the principal amount of any bond or the rate of interest thereon, or (3) the creation of a pledge of the Pledged Revenues superior to the pledge created by this Ordinance, or (4) a privilege or priority of any bond or bonds over any other bond or bonds, or (5) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 20. (a) That the City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the bonds 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 sale of the bonds and the Pledged Revenues will not be used directly or indirectly in such manner as to cause the bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) 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 Improvements or the proceeds of the bonds, in such manner as to cause the bonds to be "private activity bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of the bonds to make or finance loans to any person, and (ii) that while the bonds are outstanding the Improvements will only be used by persons on a basis as members of the general public.

(c) The Series 1991 Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning 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 1991 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

1991. The City covenants that at least 95% of the net proceeds of the Series 1991 Bonds will be used to accomplish the Improvements.

Section 21. That the City covenants that it will take no action which would cause the bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section 21 shall prohibit investments in bonds issued by the United States Treasury.

Section 22. That 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 1991 Bonds are issued, a statement concerning the Series 1991 Bonds which contains the information required by Section 149(e) of the Code.

Section 23. That 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 24. That all ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 25. That this Ordinance shall not create any right of any character and no right of any character shall arise under or pursuant hereto until the Series 1991 Bonds shall be issued and delivered.

Section 26. That it is hereby ascertained and declared that the Improvements are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The Improvements cannot be accomplished without the issuance of the Series 1991 Bonds, and therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.

PASSED: August 1, 1991.

ATTEST:

Janita S. Barner
City Clerk

APPROVED:

Randy H. [Signature]
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. 1449, passed at a special session of the City Council of the City, held at the regular meeting place of the Council at 10:00 o'clock a.m on the 1st day of August, 1991, and that the Ordinance is of record in Ordinance Record Book No. 5 at Page 152, now in my possession.

GIVEN under my hand and seal this 1st day of August, 1991.

Joanta S. Barner
City Clerk

(SEAL)