

ORDINANCE NO. 748

AN ORDINANCE PROVIDING FOR THE  
ISSUANCE OF AUDITORIUM REFUNDING  
BONDS, AND DECLARING AN EMERGENCY.

WHEREAS, on the 27th day of January, 1940, by Ordinance No. 705, the City Commissioners of Eureka Springs, Arkansas, authorized the issuance of \$56,000 in refunding bonds to refund a like amount of auditorium bonds then outstanding, issued under authority of Amendment No. 13 to the Constitution of the State of Arkansas, on which the City had defaulted the payment of interest for more than four years; and

WHEREAS, of the original \$56,000 then authorized, \$46,000 are now outstanding, dated September 1, 1939, all due September 1, 1959, bearing interest at the rate of 3% per annum to September 1, 1949, after which the rate will be 4% per annum, and the City can refund these bonds at a lower rate of interest and has decided to proceed under the provisions of Sections 13-1231 to 13-1233, Ark. Stats., 1947, to refund the outstanding bonds and save a substantial sum in interest; now, therefore,

BE IT ORDAINED by the City Commissioners of the City of Eureka Springs, Arkansas:

SECTION 1. That at a meeting held on June 13, 1949, the Commissioners authorized the advertisement of the sale of the proposed \$46,000 in auditorium refunding bonds at an interest rate of 3.35% per annum, to be dated July 1, 1949, and all maturing on September 1, 1970, with the right to the purchaser to convert the bonds to bonds bearing a lower rate of interest and either to serial maturities or to a single maturity, subject to the provision that the City will receive no less and pay no more in principal and interest combined by the conversion than it would receive or pay if the bonds were not converted, and subject to the approval of the City Commissioners.

SECTION 2. That this sale was duly advertised in the EUREKA SPRINGS TIMES ECHO AND FLASHLIGHT, a newspaper published in

and having a general and bona fide circulation in Carroll County, Arkansas, for three consecutive times, weekly, beginning June 13 and ending June 30, 1949, and a proof of the publication has been filed with the City Clerk; that this sale was set for July 8, 1949.

SECTION 3. That at the time set for the sale the Southern Securities Corporation of Little Rock, Arkansas, was the sole and only bidder but it bid par and accrued interest for the issue and complied with the terms of the advertisement, and the sale was awarded to said company, and that award is hereby approved and confirmed.

SECTION 4. The purchaser, under authority of the notice of sale, has selected the Union National Bank of Little Rock, Arkansas, as trustee and place of payment and has converted the \$46,000 in 3.35% bonds to \$48,600 in bonds of which the bonds maturing on September 1 of the years 1950 to 1959, inclusive, aggregating \$11,800, will bear interest at the rate of 2½% per annum, and the bonds maturing in the years 1960 to 1970, inclusive, aggregating \$36,800, will bear interest at the rate of 3% per annum, and has submitted computations showing that by this conversion the City will receive no less and pay no more than it would receive or pay if the bonds were not converted, and that the conversion is therefore within the terms of the advertisement, and having been examined by these Commissioners, is approved.

SECTION 5. That the action of the Mayor in notifying the Trustee as required by Ordinance No. 705 that the City expects to call in all bonds of the September 1, 1939 issue for payment on September 1, 1949, be and the same is hereby approved, and the Mayor and City Clerk are instructed to publish the notice of the call in a newspaper of general circulation throughout the State of Arkansas, once a week for two weeks before the date of the call.

SECTION 6. That in order to provide the funds to pay the outstanding bonds in accordance with the terms of the call, there be issued Auditorium Refunding Bonds in the amount of \$48,600, dated July 1, 1949, and maturing on September 1 of each year as follows:

YEAR	BOND NOS.	AMOUNT
1950	1	\$ 1000
1951	2	1200
1952	3	1200
1953	4	1200
1954	5	1200
1955	6	1200
1956	7	1200
1957	8	1200
1958	9	1200
1959	10	1200
1960	11	1200
1961	12	1300
1962	13	1300
1963	14 and 15	1500
1964	16 and 17	1500
1965	18 and 19	1500
1966	20 and 21	1500
1967	22 and 23	1500
1968	24 and 25	1500
1969	26 and 27	2000
1970	28 to 54, incl.	22,000

The bonds maturing in the years 1950 to 1959, inclusive, being Bonds Nos. 1 to 10, both inclusive, shall bear interest at the rate of two and one-half per centum (2½%) per annum until paid; the remainder of the issue, maturing in the years 1960 to 1970, both inclusive, being Nos. 11 to 54, both inclusive, shall bear interest at the rate of three per centum (3%) per annum until paid. The bonds shall be in the following denominations: Nos. 1, 14, 16, 18, 20, 22, 24, 26 to 44, inclusive--\$1000 each; Nos. 2 to 11, inclusive--\$1200 each; Nos. 12 and 13--\$1300 each; Nos. 15, 17, 19, 21, 23, 25, and 45 to 54, inclusive--\$500 each. The bonds shall be payable at the Union National Bank in Little Rock, Arkansas, shall be callable according to the terms set out in the face thereof, and shall be executed by all three City Commissioners; the coupons shall be executed by the facsimile signature of the Mayor, who by the execution of the bonds shall adopt as and for his genuine signature such facsimile signature.

SECTION 7. The bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
CITY OF EUREKA SPRINGS

\_\_\_\_% Auditorium Refunding Bond

No. \_\_\_\_\_

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Eureka Springs, in the County of Carroll, State of Arkansas, acknowledges itself to owe and, for value received, promises to pay to bearer the sum of

\_\_\_\_\_ DOLLARS

in lawful money of the United States of America, on the first day of September, 19\_\_\_\_, with interest thereon from the first day of July, 1949, at the rate of \_\_\_\_\_ per centum (\_\_\_\_%) per annum until paid, payable semi-annually on the first day of March and September of each year on presentation and surrender of the annexed coupons as they severally mature. Both the principal and interest of this bond are hereby made payable at the office of the Union National Bank of Little Rock, Arkansas; said corporation is also made Trustee and this bond shall not be valid until authenticated by the said Union National Bank, Trustee.

This bond is one of a series of fifty-four (54) bonds aggregating Forty-eight Thousand Six Hundred Dollars (\$48,600), all of like tenor and effect except as to maturities, interest rates and denominations, numbered from 1 to 54, inclusive, issued to refund bonds issued for the purpose of building an auditorium in this city; and all rights under the bonds refunded and canceled inure to the benefit of the bonds of this issue; and the City of Eureka Springs hereby covenants that it is a city of the first class of the State of Arkansas and that in the issuing of this bond it has proceeded in accordance with the provisions of Amendment No. 13 to the Constitution of the State of Arkansas and in accordance with the laws of the State of Arkansas and ordinances of the City of Eureka Springs, duly passed and approved, and this bond is issued as a refunding bond under Ordinance No. \_\_\_\_\_, passed and approved by the City Commissioners of the City of Eureka Springs on the \_\_\_\_\_ day of

\_\_\_\_\_, 1949, and that all things necessary to the validity of this bond under the Constitution and the laws of the State of Arkansas, as is true of the bonds being refunded, have been done, have happened and have been performed as required by law; and that a tax to pay the bonds aforesaid has been levied in accordance with the provisions of said Constitutional Amendment and Acts of the Arkansas Legislature and payable annually until the last of said bonds has been fully paid and discharged. For the prompt payment of this bond and the interest thereon, the said City of Eureka Springs hereby pledges its full faith, credit and taxing power, including the five mill tax authorized by said Constitutional Amendment, to pay this and other bonds of this issue and the interest thereon.

Sec 7  
See Sec. 9

After making provision for the principal and interest maturing in any one year, the City must use the surplus funds derived from the five mill tax to pay bonds prior to maturity, but the City shall not call any bond for partial payment.

All of the bonds of this issue are callable for payment prior to maturity in inverse numerical order, as follows: when called for payment from surplus revenue derived from the special five mill tax, at par and accrued interest on any interest paying date; when called for payment with funds from any other source, at a price of 101 cents on the dollar and accrued interest on any interest paying date to and including September 1, 1959, and thereafter at par and accrued interest on any interest paying date. In the event the City desires to exercise the option to call bonds for payment prior to maturity, it shall publish notice of such call once a week for two weeks in some newspaper of general circulation throughout the State of Arkansas, the first publication to be not less than fifteen days prior to the date fixed for redemption. Any and all bonds so called shall cease to bear interest on and after the date fixed for their redemption, provided funds for their payment are on deposit with the paying agent at that time.

IN WITNESS WHEREOF, the City of Eureka Springs, Arkansas, has executed this bond by the hands of the City Commissioners and attested by its corporate seal, and has caused the coupons hereto attached to be authenticated by the facsimile signature of its Mayor, as of the first day of July, 1949.

CITY OF EUREKA SPRINGS, ARKANSAS

By \_\_\_\_\_  
Mayor

\_\_\_\_\_

\_\_\_\_\_ City Commissioners

(Seal)

To each of said bonds are attached coupons for the semi-annual interest, in the following form:

COUPON

No. \_\_\_\_\_ \$ \_\_\_\_\_

On the first day of <sup>March</sup> September, 19\_\_\_\_, unless the bond to which this coupon is attached has been paid prior thereto, the City of Eureka Springs, Arkansas, promises to pay to bearer \_\_\_\_\_ Dollars in lawful money of the United States of America, at the office of the Union National Bank in the City of Little Rock, Arkansas, being six months' interest then due on its auditorium refunding bond dated July 1, 1949, and numbered \_\_\_\_\_.

CITY OF EUREKA SPRINGS, ARKANSAS

By \_\_\_\_\_  
Mayor

(First coupon shall be for eight months' interest. Signature of Mayor on coupons may be lithographed or engraved.)

On the back of each bond shall appear the following:

CERTIFICATE

This is to certify that this is one of the 54 bonds of the issue mentioned and described herein.

UNION NATIONAL BANK  
OF LITTLE ROCK, ARKANSAS, Trustee

By \_\_\_\_\_

Little Rock, Arkansas  
\_\_\_\_\_, 1949.

SECTION 8. The Mayor and City Clerk are hereby authorized and directed to deliver said bonds, when executed, to the Union National Bank of Little Rock, Arkansas, as Trustee and escrow agent, who is hereby directed to certify said bonds and deliver them to the purchaser upon proof that the City has called the September 1, 1939 bonds for redemption according to the terms set out in the face thereof and has deposited with The Lathrop-Hawk-Herrick Company, Inc., of Wichita, Kansas, Trustee and paying agent of said September 1, 1939 issue, the sum of \$46,000 and interest accrued to September 1, 1949, on the outstanding bonds of said 1939 issue, and further upon the payment to said Union National Bank of the full purchase price of said 1949 bonds, with accrued interest. The Union National Bank, as Trustee, shall use said proceeds to pay the 1939 bonds that are being refunded by transmitting the sum of \$46,000 to The Lathrop-Hawk-Herrick Company, Inc., Trustee of the September 1, 1939 bond issue. The City agrees to send prior to September 1, 1949, sufficient money to pay the interest accrued on said 1939 bonds to September 1, 1949, together with the paying charges. The City hereby instructs the said The Lathrop-Hawk-Herrick Company, Inc. to pay the bonds of the September 1, 1939 issue and accrued interest upon the presentation to it of said bonds with the September 1, 1949 and subsequent interest coupons attached. Since Bonds Nos. 1 and 2 of the September 1, 1939 issue have never been delivered but are still held by The Lathrop-Hawk-Herrick Company, Inc. because the corresponding bonds of the original issue have never been presented for refunding, The Lathrop-Hawk-Herrick Company, Inc. is hereby instructed and directed to send Bonds Nos. 1 and 2 of the September 1, 1939 issue in the face amount of \$1000 to the Union National Bank of Little Rock, Arkansas, together with the sum of \$1000. The Union National Bank shall hold said bonds and \$1000 in a trust fund for a period of five years unless the original outstanding bonds are presented for exchange during that time. If no bonds are presented for exchange by the end of the five years, the Union National Bank shall cancel Bonds Nos. 1 and 2 of the September 1, 1939 issue and pay the \$1000 to the City, and the said

\$1000 shall be deposited in the Bond and Interest Fund hereinafter described and used to call a like amount of July 1, 1949 bonds at the next interest paying date.

SECTION 9. In order to pay the said bonds as they mature, with interest thereon, there is hereby levied upon all taxable real and personal property within the City of Eureka Springs, Arkansas, a tax of five mills on each dollar of assessed valuation, beginning with the taxes collected in the year 1950 and continuing through 1970 and as long thereafter as may be necessary in order to pay the bonds and interest authorized by this ordinance, being a sum sufficient to meet said bonds and interest as they mature, with five per centum added for unforeseen contingencies; and the City Clerk is directed to transmit a copy of this ordinance to the County Clerk of Carroll County, Arkansas, to the end that said taxes may be extended on the tax books of said county and collected annually along with the other taxes until the said bonds and interest thereon are paid in full. The City agrees that all of the revenues from the five mill tax shall be put in a separate fund known as "Bond and Interest Fund" and shall be used solely for the payment of the bonds and interest of this issue, as set out in this ordinance. Any surplus from year to year shall be kept and accumulated until the City has on hand in said fund the sum of \$2500 over and above the annual principal and interest requirements of this issue. This sum of \$2500 shall be maintained as a reserve to prevent the danger of default in payment of bond or interest maturities at any time, and in the event that it becomes necessary to use it to prevent such default, it must be reestablished out of the next available tax revenues. Any revenues over and above this \$2500 must be used to call the bonds of this issue for payment prior to maturity in inverse numerical order.

SECTION 10. In order to pay said bonds, with interest thereon, as they mature, there are hereby appropriated out of the proceeds of the tax hereby levied, and if such proceeds be not sufficient, then out of the general revenues of the City, the following sums to pay the principal and interest of said bonds as they mature:

YEAR	PRINCIPAL Sept. 1 of each year	INTEREST				TOTAL
		2½%		3%		
		Mar. 1 & Sept. 1 of each year		Mar. 1 & Sept. 1 of each year		
1950	\$ 1,000	\$196.67	\$147.50	\$736.00	\$552.00	\$2,632.17
1951	1,200	135	135	552	552	2,574
1952	1,200	120	120	552	552	2,544
1953	1,200	105	105	552	552	2,514
1954	1,200	90	90	552	552	2,484
1955	1,200	75	75	552	552	2,454
1956	1,200	60	60	552	552	2,424
1957	1,200	45	45	552	552	2,394
1958	1,200	30	30	552	552	2,364
1959	1,200	15	15	552	552	2,334
1960	1,200			552	552	2,304
1961	1,300			534	534	2,368
1962	1,300			514.50	514.50	2,329
1963	1,500			495	495	2,490
1964	1,500			472.50	472.50	2,445
1965	1,500			450	450	2,400
1966	1,500			427.50	427.50	2,355
1967	1,500			405	405	2,310
1968	1,500			382.50	382.50	2,265
1969	2,000			360	360	2,720
1970	22,000			330	330	22,660

SECTION 11. The Treasurer of the City of Eureka Springs is hereby ordered and directed, not later than five days before the date of each interest payment, to remit to the paying agent the amount of interest, or interest and principal, due on said date, together with the paying charges, which shall be one-eighth of one per cent on principal and one-fourth of one per cent on interest, with the provision that the minimum paying charge shall be one dollar. This instruction to the Treasurer is irrevocable and may be enforced by mandamus.

SECTION 12. The City agrees that the proceeds of the sale of these bonds shall be used solely as follows: The accrued interest shall be paid into the Bond and Interest Fund as hereinabove described and the balance received from the sale of the bonds shall be used to pay the outstanding bonds of the September 1, 1939 issue, under the arrangement set out in Section 8 of this ordinance. The City agrees that all tax revenues shall be deposited in a bank that is a member of the Federal Deposit Insurance Corporation, and vouchers upon the Bond and Interest Fund must be signed by two duly authorized persons.

SECTION 13. If default is made and continues for thirty days in the payment of any bond or interest coupon, the holder of said bond or the bond to which said defaulted coupon is attached

may declare said bond immediately due and payable, and the failure of the holder to exercise this option upon any default shall not be a waiver of his right to exercise the option upon any subsequent default. The Trustee may, for and on behalf of all of the bondholders, declare such default and take such action as may be advisable under the circumstances to enforce the collection of the bonds and the interest.

SECTION 14. The bonds of this issue shall be callable for payment prior to maturity according to the terms set out in the face of the bond form.

SECTION 15. The City hereby reserves the right to use the surplus over the \$2500 reserve hereinabove described to purchase bonds on tender. If the City decides to exercise this option it shall give not less than fifteen days' notice in writing to the Trustee and to any bondholder whose post office address is on record with it that it will receive such tenders at the office of the Trustee until 10:00 A.M. on February 15 of any year, or if that be a Sunday or a holiday, on the next business day, at which time the tenders will be publicly opened by the Trustee, and the offer that shows the greatest saving to the City will be accepted, but no bonds shall be bought on tender that are not offered at less than par and accrued interest, nor is there any requirement that the City must ask for tenders.

SECTION 16. The Union National Bank of Little Rock, Arkansas, is designated as Trustee, authorized to act for and on behalf of the bondholders, but it shall be responsible only for wilful wrong in the execution of its trust, and the recitals of fact contained herein and in the bonds themselves are statements made by the City and not by the Trustee. The Trustee shall not be required to take notice of any default or to take any action hereunder until it shall have been notified in writing of said default and indemnified to its satisfaction against any loss, expense or cost that it may incur by taking action. The holders of a majority in value of the outstanding bonds at any time may, by an instrument duly executed

and recorded in the office of the Circuit Clerk and ex officio Recorder of Carroll County, Arkansas, appoint a new Trustee, who shall have all of the powers of the Trustee originally named, and the Trustee herein named may resign at any time upon ten days' notice in writing mailed to the City Clerk.

SECTION 17. The City agrees that it will keep the auditorium built from the proceeds of the original issue of auditorium bonds insured in companies acceptable to the Trustee to the full insurable value of said building and equipment, carrying fire, lightning and extended coverage. The policies of insurance shall carry a loss payable clause to the Trustee as its interest may appear, and they shall either be deposited with the Trustee or a certificate showing their issuance and the endorsement, satisfactory to the Trustee, shall be filed in lieu of said policies.

SECTION 18. The terms of this ordinance shall constitute a contract between the City of Eureka Springs and the holders of the bonds herein authorized, and no variation or change in the undertakings herein set out shall be made while any of these bonds are outstanding, and the holder of any bond may at any time, for and on his own behalf, or the Trustee may, for and on behalf of all the bondholders, enforce the obligations of the City by a proper suit for that purpose.

SECTION 19. The provisions of this ordinance are separable, and in the event that any section or part of section shall be held to be invalid, such invalidity shall not affect the remainder of the ordinance.

SECTION 20. It is hereby ascertained and declared that unless the City can complete its arrangements for refunding its outstanding bonds, the interest rate will increase on September 1, 1949, to 4%, greatly adding to the cost, and will result in an irrecoverable loss to the City which will in turn tend to hamper its ability to protect the health, life and property of its inhabitants, and therefore an emergency exists and this ordinance is necessary for the preservation of the public peace, health and

safety, and shall be in force and take effect immediately upon and after its passage.

Passed: July 13, 1949.

Approved: July 13, 1949.

W. H. Russell  
Mayor

Attest:

Ray Freeman  
City Clerk

C E R T I F I C A T E

I, the undersigned, City Clerk of the City of Eureka Springs, Arkansas, hereby certify the above and foregoing to be a true, correct and complete copy of Ordinance No. 748, which was duly passed by the City ~~Comissions~~ of said City on the 13 day of July, 1949, at a duly called and constituted meeting at which all the Commissioners were present and voted for said ordinance, which is now of record in Ordinance Book No. 3, page 137, of the records of said City.

CERTIFIED under my hand and the seal of said City this 13 day of July, 1949.

Ray Freeman  
City Clerk

(Seal)