

**ORDINANCE NO. 04-02-2012**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX BONDS, SERIES 2012 FOR THE PURPOSE OF FINANCING THE COST OF CAPITAL IMPROVEMENTS; PLEDGING COLLECTIONS OF A 1.00% SALES AND USE TAX 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 Elkins, Arkansas (the "City") the question of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (the "State") and under Title 26, Chapter 75, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), capital improvement bonds to finance the construction of betterments and improvements to the water and sewer system (the "Water and Sewer Improvements") for the City; and

WHEREAS, at the special election held September 9, 2008, a majority of the electors voting on the question approved the issuance of bonds in the maximum amount of \$6,000,000; and

WHEREAS, on December 23, 2008, the City issued \$835,000 of Sales and Use Tax Improvement Bonds; and

WHEREAS, the City Council of the City has determined to accomplish a second phase of the Water and Sewer Improvements and to issue a series of capital improvement bonds in the aggregate principal amount of \$2,640,000 designated as "City of Elkins, Arkansas Sales and Use Tax Bonds, Series 2012" (the "Series 2012 Bonds"); and

WHEREAS, the City has made arrangements for the sale of the Series 2012 Bonds to Stephens Inc. (the "Purchaser"), at a price of \$2,557,418.14 (principal amount less original issue discount of \$20,189 and less underwriter's discount of \$66,000, plus accrued interest of \$3,607.14) (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 March 22, 2012, offering the Series 2012 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 Simmons First Trust Company, N.A., Pine Bluff, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the Series 2012 Bonds, has been presented to and is before this meeting; and

WHEREAS, the City is authorized to issue additional parity bonds under Section 11 hereof ("Additional Parity Bonds"), and the Series 2012 Bonds and the Additional Parity Bonds are hereinafter referred to collectively as the "bonds";

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

Section 1. The offer of the Purchaser for the purchase of the Series 2012 Bonds from the City at the Purchase Price, for Series 2012 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 the Series 2012 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 2. 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 2012 Bonds is hereby in all respects approved and confirmed, and the Mayor be and he is hereby 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 as set forth in the Agreement.

Section 3. 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 on behalf of the City. The Mayor and City Recorder/Treasurer are each authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement. Any legal fees and other administrative costs incurred by the City in connection with making the annual report pursuant to the Disclosure Agreement (except audit fees) shall be considered administrative charges that may be payable from moneys in the Bond Fund.

Section 4. Under the authority of the Constitution and laws of the State, including particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, the Series 2012 Bonds are hereby authorized and ordered issued in the total principal amount of \$2,640,000, the proceeds of the sale of which are necessary to provide a portion of the funds necessary for accomplishing the Water and Sewer Improvements, paying expenses incidental thereto, providing a debt service reserve, and paying expenses of issuing the Series 2012 Bonds.

The Series 2012 Bonds shall bear interest at the rates and shall mature on May 1 in the amounts and in the years as follows:

<u>Year (May 1)</u>	<u>Amount</u>	<u>Interest Rate</u>
2013	\$75,000	1.125%
2014 <sup>(1)</sup>	75,000	1.125%
2015	75,000	1.750%
2016 <sup>(2)</sup>	75,000	1.750%
2017	80,000	2.400%
2018 <sup>(3)</sup>	80,000	2.400%
2019	80,000	2.950%
2020 <sup>(4)</sup>	85,000	2.950%
2021	85,000	3.375%
2022 <sup>(5)</sup>	90,000	3.375%
2023	95,000	3.650%
2024 <sup>(6)</sup>	95,000	3.650%
2025	100,000	3.950%
2026 <sup>(7)</sup>	105,000	3.950%
2027	105,000	4.100%
2028 <sup>(8)</sup>	110,000	4.100%
2029	115,000	4.125%
2030	120,000	4.125%
2031	125,000	4.125%
2032	130,000	4.125%
2033 <sup>(9)</sup>	135,000	4.125%
2034	140,000	4.000%
2035	150,000	4.000%
2036	155,000	4.000%
2037 <sup>(10)</sup>	160,000	4.000%

- (1) Term Bonds due May 1, 2014
- (2) Term Bonds due May 1, 2016
- (3) Term Bonds due May 1, 2018
- (4) Term Bonds due May 1, 2020
- (5) Term Bonds due May 1, 2022
- (6) Term Bonds due May 1, 2024
- (7) Term Bonds due May 1, 2026
- (8) Term Bonds due May 1, 2028
- (9) Term Bonds due May 1, 2033
- (10) Term Bonds due May 1, 2037

The Series 2012 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 2012 Bonds shall be numbered from 1 upward in order of issuance. Each Series 2012 Bond shall have a CUSIP number but the failure of a CUSIP number to appear on any Series 2012 Bond shall not affect its validity.

Each Series 2012 Bond shall be dated as of May 1, 2012. Interest on the Series 2012 Bonds shall be payable on November 1, 2012, and semiannually thereafter on May 1 and November 1 of each year. Payment of each installment of interest shall be made to the person in whose name the Series 2012 Bond is registered on the registration books of the City maintained by Simmons First Trust Company, N.A., Pine Bluff, 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 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; provided, however, payment of interest shall be made by wire transfer if requested by a registered owner of the Series 2012 Bonds in the aggregate principal amount of \$1,000,000 or more. Principal of the Series 2012 Bonds shall be payable at the principal corporate trust office of the Trustee.

Each Series 2012 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 May 1, 2012, 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 2012 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 2012 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 2012 Bond shall be conclusive evidence that such bond has been authenticated and delivered under this Ordinance. The Certificate on any Series 2012 Bond 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 2012 Bonds.

In case any 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 bond of like date, series, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated bond, or in lieu of and in substitution for such 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 bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such 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 bond. In the event any such bond shall have matured, instead of issuing a new bond, the City may pay the same without the surrender thereof. Upon the issuance of a new 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 to be maintained books for the registration and for the transfer of the bonds as provided herein and in the bonds. The Trustee shall act as the bond registrar. Each 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 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.

Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of bonds of any other authorized denomination or denominations. The City shall execute and the Trustee shall authenticate and deliver bonds which the registered owner making the exchange is entitled to receive. The execution by the City of any 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 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 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 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. The Series 2012 Bonds shall be registered initially in the name of Cede & Co., as nominee for the Depository Trust Company ("DTC"), which shall be considered to be the registered owner of the Series 2012 Bonds for all purposes under this Ordinance, including, without limitation, payment by the City of principal of, redemption price, premium, if any, and interest on the Series 2012 Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten Series 2012 Bond for each stated maturity date which shall be immobilized in the custody of DTC with the beneficial owners having no right to receive the Series 2012 Bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership of beneficial interests in the Series 2012 Bonds by book-entry on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book-entry, the City having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the Series 2012 Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Series 2012 Bonds. The Series 2012 Bonds as such shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository, without further action by the City.

If any securities depository determines not to continue to act as a securities depository for the Series 2012 Bonds for use in a book-entry system, the Trustee may establish a securities depository/book-entry system relationship with another securities depository. If the City does not or is unable to do so, or upon request of the owners of all outstanding Series 2012 Bonds, the City and the Trustee, after the Trustee has made provision for notification of the beneficial owners by the then securities depository, shall permit withdrawal of the Series 2012 Bonds from the securities depository, and authenticate and deliver Series 2012 Bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the securities depository or its nominee, all at the cost and expense (including costs of printing definitive Series 2012 Bonds) of the City or of the beneficial owners of the Series 2012 Bonds.

Prior to issuance of the Series 2012 Bonds, the City shall have executed and delivered to DTC a written agreement (the "Representation Letter") setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the City with respect to the Series 2012 Bonds so long as the Series 2012 Bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the Series 2012 Bonds other than the registered owners, as shown on the registration books kept by the Trustee. The Trustee shall take all action necessary for all representations of the City in the Representation Letter with respect to the Trustee to at all times be complied with.

The authorized officers of the Trustee and the City shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a securities depository for all or any portion of the Series 2012 Bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of Series 2012 Bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Section 6. The bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Recorder/Treasurer and shall have impressed or imprinted thereon the seal of the City. The Series 2012 Bonds and the Trustee's Certificate shall be in substantially the following form and the Mayor and City Recorder/Treasurer are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Series 2012 Bond)

REGISTERED

REGISTERED

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

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF WASHINGTON  
CITY OF ELKINS  
SALES AND USE TAX BOND  
SERIES 2012

Interest Rate: \_\_\_\_\_%

Maturity Date: May 1, \_\_\_\_\_

Dated Date: May 1, 2012

CUSIP No.: \_\_\_\_\_

Registered Owner: Cede & Co.

Principal Amount: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Elkins, County of Washington, 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 Simmons First Trust Company, N.A., Pine Bluff, 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 described below at the Interest Rate per annum shown above, payable on each May 1 and November 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. Notwithstanding the above, payment of interest shall be made by wire transfer when requested by the Registered Owner hereof if it is the registered owner of bonds of this issue in the aggregate principal amount of \$1,000,000 or more.

Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

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 Elkins, Arkansas Sales and Use Tax Bonds, Series 2012, aggregating Two Million Six Hundred Forty Thousand Dollars (\$2,640,000) in aggregate principal amount (the "bonds"), and is issued for the purpose of financing the costs of accomplishing water and sewer improvements, paying necessary expenses incidental thereto, providing 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 75, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. 04-02-2012 of the City duly adopted on April 2, 2012 (the "Authorizing Ordinance"), and an election duly held on September 9, 2008 at which the majority of the legal voters of the City voting on the question 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 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

collections that are received by the City (the "Pledged Revenues") from a 1.00% sales and use tax (the "Tax") levied by the City under the Authorizing Legislation and Ordinance No. 07-07-2008B of the City duly adopted on July 7, 2008, and approved by the voters in the City at an election held September 9, 2008, and the City hereby pledges the Pledged Revenues for the payment of this bond. 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.

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

(1) The Series 2012 Bonds or portions thereof may be redeemed on any interest payment date from moneys in the Project Fund not needed to complete the Project, after May 1, 2015, in inverse order of maturity (Bonds within a maturity to be selected by lot in such manner as the Trustee shall determine to be fair and equitable) at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

In addition, the Series 2012 Bonds or portions thereof shall be redeemed from Surplus Tax Receipts (hereinafter defined) on any interest payment date, at least annually, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date. "Surplus Tax Receipts" are, so long as there are no Additional Bonds outstanding, 100% of the collections of Tax in excess of the amount necessary to (i) insure the prompt payments of the principal of, interest on and Trustee's and administrative fees and expenses in connection with the Series 2012 Bonds as the same become due, (ii) maintain debt service reserves in the required amounts, and (iii) pay any arbitrage rebate dues under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code").

In the event of a redemption from Surplus Tax Receipts, the Series 2012 Bonds shall be redeemed in inverse order of maturity by lot within a maturity for a particular series in such manner as the Trustee shall determine. Surplus Tax Receipts available for redemption shall be allocated pro rata between the Series 2012 Bonds based upon the principal amount outstanding of the maturity to be redeemed.

If there are Additional Bonds outstanding, "Surplus Tax Receipts" shall mean collection of the Tax in excess of the amount necessary to (i) insure the prompt payments of the principal of, interest on and Trustee's and administrative fees and expenses in connection with the Series 2012 Bonds and any Additional Bonds as the same become due, (ii) maintain debt service reserves in the required amounts, and (iii) pay any arbitrage rebate dues under Section 148(f) of the Code.

(2) The Series 2012 Bonds may be redeemed at the option of the City from funds from any source, on and after May 1, 2017, in whole at any time or in part on any interest payment date, at a redemption price equal to the principal amount being redeemed, plus accrued interest to the redemption date. If fewer than all of the Series 2012 Bonds shall be called for redemption, the particular maturities of the Series 2012

Bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the Series 2012 Bonds of any one maturity shall be called for redemption, the particular Series 2012 Bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

(3) To the extent not previously redeemed, the Series 2012 Bonds maturing on May 1, 2014, 2016, 2018, 2020, 2022, 2024, 2026, 2028, 2033 and 2037 are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on May 1 in the years and in the amounts set forth below, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption:

<u>May 1</u>	<u>Principal Amount</u>
2013	\$75,000
2014	75,000
<u>May 1</u>	<u>Principal Amount</u>
2015	\$75,000
2016	75,000
<u>May 1</u>	<u>Principal Amount</u>
2017	\$80,000
2018	80,000
<u>May 1</u>	<u>Principal Amount</u>
2019	\$80,000
2020	85,000
<u>May 1</u>	<u>Principal Amount</u>
2021	\$85,000
2022	90,000
<u>May 1</u>	<u>Principal Amount</u>
2023	\$95,000
2024	95,000
<u>May 1</u>	<u>Principal Amount</u>
2025	\$100,000
2026	105,000
<u>May 1</u>	<u>Principal Amount</u>
2027	\$105,000
2028	110,000