

DRAFT DATED  
11/14/08

ORDINANCE NO. 11-18-2008

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$1,300,000 PRINCIPAL AMOUNT OF WATER AND SEWER REVENUE CONSTRUCTION BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE, AND A BOND PURCHASE AGREEMENT IN CONNECTION THEREWITH; APPROVING AN OFFICIAL STATEMENT IN CONNECTION WITH THE OFFER AND SALE OF THE BONDS; PROVIDING FOR CERTAIN OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Elkins, Arkansas (the "City") is authorized under the Constitution and laws of the State of Arkansas (the "State"), particularly Amendment 65 and Arkansas Code Annotated Sections 14-234-201 *et seq*; Arkansas Code Annotated Sections 14-235-201 *et seq*; and Arkansas Code Annotated Sections 14-164-401 *et seq* (collectively, the "Authorizing Legislation"), to issue its revenue bonds to finance water and sewer improvements for the City's water and sewer system; and

WHEREAS, the City Council finds that it is in the best interest of the City and the ratepayers of its Water and Sewer Department to issue bonds to pay for construction of improvements to the water portion of the City of Elkins' water and sewer system (the "System"), to fund a debt service reserve, and to pay the costs associated with the issuance of the Bonds. The Bonds are being issued on a parity of security [subordinate to] three loans from the Arkansas Natural Resources Commission (the former Arkansas Soil and Water Conservation Commission) with a total outstanding principal amount of \$476,920 as of December 31, 2007; and

WHEREAS, arrangements have been made for the sale of the Bonds to Stephens Inc., as underwriter (the "Underwriter") pursuant to the terms of a Bond Purchase Agreement (the "Bond Purchase Agreement") to be entered into between the City and the Underwriter; and

WHEREAS, in connection with the offer and sale of the Bonds, there will be prepared and distributed a Preliminary Official Statement and Official Statement; and

WHEREAS, copies of the Indenture, Preliminary Official Statement, Official Statement, and Bond Purchase Agreement (as defined herein) will be submitted to the Mayor for review and approval;

NOW, THEREFORE, IT IS HEREBY ORDAINED by the City Council of Elkins, Arkansas, as follows:

Section 1. Under the authority of the Constitution and laws of the State, including particularly Amendment 65 and the Authorizing Legislation, there is hereby authorized the issuance of revenue bonds of the City to be designated "City of Elkins, Arkansas Water and Sewer Revenue Construction Bonds in the principal amount of not to exceed \$1,300,000 (the "Bonds"). The Bonds shall be special obligations of the City and the principal of and the interest on and any redemption premium on the Bonds shall be secured by a pledge of revenues of the City's water and sewer system. The Bonds shall bear interest at the rates specified in the Indenture hereinafter authorized. The Mayor is hereby authorized and directed to approve the form of the Bonds with terms, conditions and provisions that are usual and customary and further approved by Williams & Anderson PLC ("Bond Counsel"). The Mayor is hereby authorized to execute and deliver the Bonds, and the City Recorder is hereby authorized and directed to execute and deliver the Bonds, and the Mayor and the City Recorder are hereby authorized and directed to cause the Bonds to be authenticated by the trustee named in the Indenture (the "Trustee").

Section 2. To prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, issued, accepted and held, the Mayor and the City Recorder are hereby authorized and directed to execute, acknowledge and deliver the Indenture, and the Mayor and the City Recorder are hereby authorized and directed to cause the Indenture to be accepted, executed, and acknowledged by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Indenture with terms, conditions and provisions which are usual and customary as approved by the Mayor and Bond Counsel.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute the Bond Purchase Agreement by and between the City and Underwriter. The Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement with terms, conditions and provisions that are usual and customary as approved by the Mayor and Bond Counsel.

Section 4. In connection with the offer and sale of the Bonds, the Mayor and City staff are hereby authorized to assist the Underwriter in the completion of a Preliminary Official Statement and an Official Statement describing, among other matters, the City and its water and sewer system. The Mayor is hereby authorized to "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 of the U.S. Securities and Exchange Commission.

Section 5. All actions heretofore taken by the City and its officers and staff in connection with the offer and sale of the Bonds are hereby in all respects ratified and approved.

Section 6. The City hereby represents that it reasonably expects that it and all subordinate entities thereof will not issue more than \$10,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during the calendar year 2008. The City hereby designates each of the Bonds as a "qualified tax-exempt obligation" for the purposes of the Code.

Section 7. The Mayor and City Recorder, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Bonds, the Indenture, the Bond Purchase Agreement, the Preliminary Official Statement, the Official Statement and the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Recorder are hereby authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

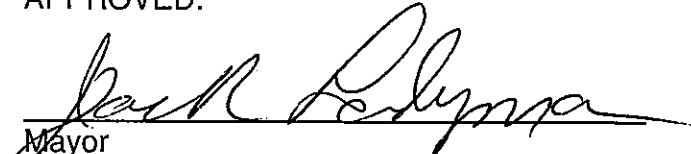
Section 8. The provisions of this Ordinance are hereby declared to be severable and, if any such provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Section 9. All resolutions or ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

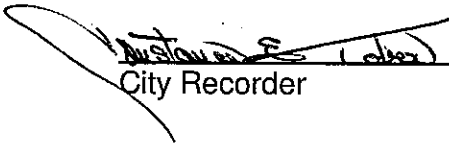
Section 10. It is hereby ascertained and declared that, in order to complete the betterments and improvements to the water system of the City. The financing thereof must be accomplished and facilitated by the issuance of the Bonds. It is, therefore, declared that an emergency exists and this Ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be enforced from and after its adoption.

PASSED AND APPROVED this 18<sup>th</sup> day of November, 2008.

APPROVED:

  
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Mayor

ATTEST:

  
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City Recorder