

ORDINANCE NO. 03-17-2011 H

**AN ORDINANCE REPEALING ORDINANCE NO. 09-17-2009, AND AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE TO PROVIDE SHORT-TERM FINANCING UNDER AMENDMENT NO. 78 TO THE ARKANSAS CONSTITUTION FOR THE ACQUISITION, CONSTRUCTION, AND INSTALLATION OF REAL AND TANGIBLE PERSONAL PROPERTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE; PRESCRIBING OTHER MATTERS PERTAINING THERETO;**

WHEREAS, the City of Elkins, Arkansas (the "City") is authorized and empowered under the provisions of Amendment No. 78 to the Arkansas Constitution ("Amendment No. 78") and Act No. 1808 of 2001 (codified as Title 14, Chapter 78 of the Arkansas Code of 1987 Annotated) (the "Act"), to issue promissory notes and to expend the proceeds thereof to finance all or a portion of the cost of acquiring, constructing, and installing real property or tangible personal property having an expected useful life of more than one year; and

WHEREAS, the City proposes to construct and make certain improvements and additions (the "Improvements") to the Elkins Public Library located at 162 Doolin Drive, Elkins, Arkansas (the "Property"); and

WHEREAS, it is proposed that the City issue its promissory note in the principal amount not to exceed \$350,000 (the "Note") under Amendment No. 78 and the Act for the purpose of financing all or a portion of the costs of the acquisition, construction and installation of the Improvements on the Property; and

WHEREAS, the City has arranged for a loan (the "Loan") from Bank of the Ozarks (the "Lender") and intends to issue such Note to the Lender at a price of par in consideration for such Loan;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKINS, ARKANSAS, THAT:**

**Section 1.** The City Council hereby finds that the Improvements to the Property consist of real property or tangible personal property having a useful life of more than one year. The City Council further finds that the principal amount of the Note does not exceed five percent of the assessed value of taxable property located within the City as determined by the last tax assessment completed before the issuance of the Note.

**Section 2.** Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment No. 78 and the Act, the Note is hereby authorized and ordered issued in the principal amount of not to exceed \$350,000 for the purpose of financing all or a portion of the costs of acquiring, constructing, and installing the Improvements on the Property and paying expenses of issuing the Note. The Note shall be issued in one or more series. The Note shall be dated the date of its issuance and shall bear interest on the outstanding principal amount at a fixed rate not to exceed 4.75% per annum (calculated on the basis of the actual number of days elapsed in a year of 365 days (366 days in a leap year)). The Note shall be repaid in monthly installments of interest only for 12 months, followed by installments of principal and interest over an additional 24 months based on a 20 year amortization, with a final balloon installment due three years from the date of the

Note, The Note shall be issued in fully registered form. The Note shall be on a parity of security with any other notes subsequently issued. The Note hereby designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 3. The Note shall be issued to the Lender in consideration for the Loan. The Lender has been selected by the Mayor and the City Council based upon the proposal for the Loan that was determined to have the lowest cost to the City. The Note shall be issued in the principal amount not to exceed \$350,000.

Section 4. As provided in Amendment No. 78, the annual debt service payments on the Note in each fiscal year shall be charged against and paid from the Library Fund of the City for such fiscal year, and if such fund shall be deficient, then from the general revenues of the City. For the purpose of making the annual debt service payments, there is hereby, and shall be, appropriated to pay the Note, an amount of the Library Fund of the City sufficient for such purposes, and if such fund shall be deficient, then an amount of the general revenues of the City sufficient for such purposes is hereby appropriated in lieu thereof. The City Recorder/Treasurer is hereby authorized and directed to withdraw from the Library Fund of the City the amounts and at the times necessary to make the annual debt service payments on the Note, and if such fund shall be deficient, then the City Recorder/Treasurer is hereby authorized and directed to withdraw from the non-dedicated portion of the General Fund of the City the amounts and at the times necessary to make the annual debt service payments on the Note

**Section 5.** The City covenants with the owner or owners of the Note that the Note will be issued on a tax-exempt basis (the "Tax-Exempt Series") as follows:

(a) The City 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 Tax-Exempt Series 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 Tax-Exempt Series will not be used directly or indirectly in such manner as to cause the Tax-Exempt Series to be treated as an "arbitrage bond" within the meaning of section 148 of the Internal Revenue Code of 1986, as Amended (the "Code").

(b) The City will not use or permit the use of the Improvements to the Property to be acquired, constructed, or equipped with the proceeds of the Tax-Exempt Series in such manner as to cause the Tax-Exempt Series to be a "private activity bond" within the meaning of section 141 of the Code.

(c) None of the gross proceeds of the Tax-Exempt Series will be used (directly or indirectly) either (i) to make or finance loans to persons other than state or local governmental units or (ii) in any trade or business carried on by any person (A) other than a state or local governmental unit or (B) other than as a member of the general public.

(d) The City will take no action which would cause the Tax-Exempt Series to be "federally guaranteed" within the meaning of the Code.

(e) The City will not reimburse itself from proceeds of the Tax-Exempt Series for any costs paid prior to the date the Tax-Exempt Series is issued except in compliance

with United States Treasury Regulation § 1.150-2. This Ordinance shall constitute an "official intent" for purposes of the Regulation.

(f) The City 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 Tax-Exempt Series are issued, a statement concerning the Tax-Exempt Series which contains the information required by section 149(e) of the Code.

**Section 6.** The City shall provide such financial information to the Lender as the Lender may reasonably request.

**Section 7.** The Mayor and the City Recorder-Treasurer, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, execution, and delivery of the Note and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Recorder/Treasurer are hereby further 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.** *Severability.* In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

**Section 9. Repealer.** All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

**Section 10. Emergency.** The City Council hereby determines that the Property must be acquired, constructed, and installed as soon as possible in order to alleviate immediate hazards to the health, safety, and welfare of the City, its inhabitants, and their property, and that the Property can be acquired, constructed, and installed only by the issuance of the Note. 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 passage.

**Section 11.** Ordinance No. 09-17-2009 is hereby repealed, all actions taken by employees/officials of the City in reliance thereon are hereby expressly confirmed and ratified.

PASSED AND APPROVED THE 21<sup>st</sup> day of April, 2011.

  
L. BRUCE LEDFORD, Mayor

ATTEST:



JASON BATHON, City Clerk