

ORDINANCE NO. 0-99-09

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CAPITAL IMPROVEMENT REVENUE BONDS (CIVIC CENTER PROJECT), SERIES 1999; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the Board of Directors of the City of Arkadelphia, Arkansas (the "City") has determined that an approximately 15,000 square foot city hall building to be known as the Arkadelphia Civic Center (the "Project") should be acquired, constructed and equipped on the 700 block of Clay Street in the City (the "Project"); and

WHEREAS, the Project will include space for meetings, administration and other purposes; and

WHEREAS, the estimated cost of the Project and issuing bonds is \$1,870,000 and the City can obtain a portion of the necessary funds by issuing Capital Improvement Revenue Bonds (Civic Center Project), Series 1999, in the aggregate principal amount of \$600,000 (the "bonds"); and

WHEREAS, the balance of the costs of the Project can be funded with available funds of the City including, particularly, without limitation, funds of the water and sewer system, and a grant from an agency of the United States of America; and

WHEREAS, through the assistance of Morgan Keegan & Company, Inc., as placement agent for the City, the City is making arrangements for the sale of the bonds to various banks (the "Bondholders") at a price of par plus accrued interest pursuant to Letters of Offer and Representations which have been presented to and are before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Arkadelphia, Arkansas:

Section 1. The offer of the Bondholders for the purchase of the bonds from the City at the price of par plus accrued interest are hereby accepted, and the bonds are hereby sold to the Bondholders. The Mayor is hereby authorized and directed to execute and deliver the Letters of Offer and Representations for and on behalf of the City.

Section 2. Under the authority of the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, City of Arkadelphia, Arkansas Capital Improvement Revenue Bonds (Civic Center Project), Series 1999 are hereby

authorized and ordered issued in the principal amount of \$600,000 for the purpose of financing a portion of the costs of accomplishing the Project and paying necessary expenses incidental thereto and to the authorization and issuance of the bonds. The bonds shall mature on August 1, 2009 and shall bear interest at the rate of 4.50% per annum based upon a 360-day year and twelve 30-day months.

The bonds shall be dated August 1, 1999 and 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 bonds shall be numbered from 1 upward in order of issuance.

Interest on the bonds shall be payable on February 1, 2000, and semiannually thereafter on February 1 and August 1 of each year.

Payment of principal and interest shall be by check or draft mailed to each Bondholder at its address shown on the bond registration books of the City which shall be maintained by the City Clerk as Bond Registrar, without presentation or surrender of the bond (except upon final payment) and such payments shall discharge the obligation of the City to the extent thereof. The City Clerk shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the bonds have been fully paid, they shall be canceled and delivered to the City Clerk.

Section 3. The bonds shall be executed on behalf of the City by the Mayor and City Clerk and shall have impressed thereon the seal of the City. The bonds, together with interest thereon, are secured solely by the Pledged Revenues. The Pledged Revenues are hereby pledged and mortgaged for the equal and ratable payment of the bonds. The "Pledged Revenues" are a special revenue source and are defined to mean all franchise fee revenues received by the City from public utilities for the privilege of using the streets, highways and other public places in the City. The Pledged Revenues shall not be deemed to be general revenues of the City and shall be deposited into a special fund hereinafter created. The bonds and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation. The bonds shall never give rise to a charge against the City's general credit or taxing power and no funds derived from the City's taxes are pledged to pay the bonds. Nothing herein shall require the City to pay the principal of and interest on the bonds from sources other than the

Pledged Revenues, but nothing herein shall prohibit the City from doing so.

Section 4. The bonds 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)

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF CLARK  
CITY OF ARKADELPHIA  
4.50% CAPITAL IMPROVEMENT REVENUE BOND  
(CIVIC CENTER PROJECT)  
SERIES 1999

No. R- \_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS:

That the City of Arkadelphia, Clark County, Arkansas (the "City"), for value received, hereby acknowledges itself to owe and promises to pay to \_\_\_\_\_, or assigns, the principal sum of

\_\_\_\_\_ DOLLARS

on August 1, 2009 with interest on the unpaid balance of the total principal amount at the rate of 4.50% per annum. The principal and interest shall be payable 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 debts due the United States of America. Interest on the unpaid balance of the total principal amount shall be payable on February 1, 2000 and on the first days of February and August thereafter until this bond is paid in full.

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the registered owner at his address shown on the bond registration book of the City maintained by the City Clerk as Bond Registrar, and such payments shall fully discharge the obligation of the City to the extent of the payments so made.

This bond is one of an issue of City of Arkadelphia, Arkansas Capital Improvement Revenue Bonds (Civic Center Project), Series 1999, aggregating Six Hundred Thousand Dollars (\$600,000) in principal amount (the "bonds"), and is issued for the purpose of financing a portion of the costs of the acquisition, construction and equipping by the City of a city hall to be known as the

Arkadelphia Civic Center and paying necessary expenses incidental thereto and to the authorization and issuance of the bonds.

The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 164, Subchapter 4 of the Arkansas Code of 1987 Annotated, and pursuant to Ordinance No. \_\_\_\_\_ of the City, duly adopted on \_\_\_\_\_, 1999 (the "Authorizing Ordinance"), and do not constitute an indebtedness of the City within any constitutional or statutory limitation. The bonds are not general obligations of the City, but are special obligations secured solely by a pledge of revenues received by the City that are derived from the payment of franchise fees by public utilities for the privilege of using of the streets, highways and other public places in the City (the "Pledged Revenues"). The Pledged Revenues shall be deemed to be a special source for the payment of the bonds. The bonds shall never give rise to a charge against the City's general credit or taxing power and no funds derived from the City's taxes are pledged to pay the bonds. An amount of Pledged Revenues sufficient to pay the principal of and interest on the bonds has been duly pledged and set aside into the 1999 Capital Improvement Revenue Bond Fund (Civic Center Project) identified in the Authorizing Ordinance. Reference is hereby made to the Authorizing Ordinance for a detailed statement of the terms and conditions upon which the bonds are issued, of the nature and extent of the security for the bonds, and the rights and obligations of the City and owners of the bonds. Nothing herein or in the Authorizing Ordinance shall require the City to pay the principal of and interest on this bond except from the Pledged Revenues, but nothing herein or in the Authorizing Ordinance shall prevent the City from doing so.

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF SECTION 265(b) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

The bonds shall be subject to optional and mandatory sinking fund redemption as follows:

(1) The bonds are subject to redemption at the option of the City 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.

(3) The bonds are subject to mandatory sinking fund redemption on August 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>Year</u><br><u>(August 1)</u> | <u>Principal Amount</u> |
|----------------------------------|-------------------------|
| 2000                             | \$50,000                |
| 2001                             | 50,000                  |
| 2002                             | 55,000                  |
| 2003                             | 55,000                  |
| 2004                             | 60,000                  |
| 2005                             | 60,000                  |
| 2006                             | 65,000                  |
| 2007                             | 65,000                  |
| 2008                             | 70,000                  |
| 2009                             | 70,000                  |

In the event of an optional redemption, principal shall be applied either in inverse chronological order of sinking fund installments due or on a pro rata basis against sinking fund installments due, as directed by the City in writing. In all events, principal shall be applied pro rata against each bond based upon principal amount outstanding and rounded to the nearest \$1,000.

Notice of redemption identifying the bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed shall be given by City, not less than 10 nor more than 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 may be assigned, and in order to effect such assignment the assignor shall promptly notify the City Clerk by registered mail, and the assignee shall surrender this bond to the City Clerk for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the City Clerk), prior to such surrender for transfer.

This bond is issued with the intent that the laws of the State shall govern its construction.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the bonds do exist,

have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the bonds, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the above referred to revenues pledged to the payment of the principal of and interest on the bonds as the same become due and payable will be sufficient in amount for that purpose.

IN WITNESS WHEREOF, the City of Arkadelphia, Arkansas has caused this bond to be executed by its Mayor and City Clerk, and its corporate seal to be impressed on this bond, all as of August 1, 1999.

CITY OF ARKADELPHIA, ARKANSAS

ATTEST:

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

\_\_\_\_\_  
City Clerk

(SEAL)

(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 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 of or participant in the Securities Transfer Agents Medallion Program (STAMP), or in another signature guaranty program recognized by City.

Section 5. (a) The City agrees to continuously charge franchise fees to all public utilities occupying the streets, highways and other public places under Arkansas Code Annotated §§14-200-101-112 while the bonds are outstanding.

(b) The franchise fees currently charged to public utilities, are hereby ratified, confirmed and continued and such fees shall never be reduced while the bonds are outstanding unless

the City receives an opinion of a certified public accountant not in the regular employ of the City ("Accountant") to the effect that Pledged Revenues for the preceding fiscal year, assuming such reduction had been in effect for the entire year, would have equaled not less than 125% of the maximum annual debt service on all obligations of the City to which Pledged Revenues are pledged.

(c) The franchise fees currently collected from the public utilities are sufficient to pay the principal of and interest on the bonds when due and the City agrees that the percentage rate of each franchise fee currently collected by the City from public utilities will not be increased solely for the purpose of providing funds to pay the principal of and interest on the bonds when due.

Section 6. The City Treasurer shall be the custodian of all Pledged Revenues. All Pledged Revenues shall at all times be accounted for separately and distinctly from other moneys of the City and shall be used and applied only as provided herein. Upon receipt by the City, the Pledged Revenues shall not be deposited into the General Fund but shall be deposited into a special fund of the City hereby created and designated as the "Franchise Fee Fund" in such depository or depositories for the City as may be lawfully designated by the City from time to time; provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation or any successor entity ("FDIC").

Section 7. There shall be transferred from the Franchise Fee Fund into a special fund to be established at a bank selected by the City that is a member of the FDIC, hereby created and designated "1999 Capital Improvement Revenue Bond Fund (Civic Center Project)" (the "Bond Fund"), 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 due.

There shall be paid into the Bond Fund on or before the last business day of each month, commencing in August 1999, 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 interest plus 1/12 of the next installment of principal on all outstanding bonds due at maturity or upon mandatory sinking fund redemption.

The City shall receive a credit against monthly deposits into the Bond Fund from bond proceeds deposited therein and all interest earnings on moneys in the Bond Fund.

If Pledged Revenues are insufficient to make the required payment by the last business day of the month into the Bond Fund, then 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 by the last business day of the next month. Nothing herein

shall require the City to make deposits into the Bond Fund from sources other than the Franchise Fee Fund, but nothing herein shall prohibit the City from depositing funds from other sources into the Bond Fund.

The City Treasurer is hereby authorized and directed to withdraw from the Bond Fund on the due date for the principal and/or interest on any bond, at maturity or redemption prior to maturity, an amount equal to the amount of such bond and interest due thereon for the sole purpose of paying the same. No withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance.

Section 8. Any surplus in the Franchise Fee Fund after making the monthly deposits into the Bond Fund may be withdrawn from the Franchise Fee Fund and used, at the option of the City, for other lawful municipal purposes; provided, however, that if the City receives Pledged Revenues only on a quarterly or annual basis, there shall always remain in the Franchise Fee Fund an amount sufficient to make the required payments into the Bond Fund until the next Pledged Revenues are to be received.

Section 9. So long as any of the bonds are outstanding, the City shall not issue or attempt to issue any bonds or obligations claimed to be entitled to a priority of lien on the Pledged Revenues over the lien securing the bonds. The City reserves the right to issue additional bonds to finance or pay the cost of constructing any additional capital improvements or to refund bonds issued for such purpose, but the City shall not authorize or issue any such additional bonds ranking on a parity with the outstanding bonds unless and until there have been procured and filed with the City Clerk a statement by an Accountant reciting the opinion, based upon necessary investigation, that the Pledged Revenues for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds were equal to not less than 130% of the average annual principal and interest requirements on all the then outstanding obligations secured by Pledged Revenues and the additional bonds then proposed to be issued.

The additional bonds, the issuance of which is restricted and conditioned by this Section, shall be understood to mean bonds secured by Pledged Revenues ranking on a parity of security with the bonds and not bonds secured by Pledged Revenues subordinate in security to the bonds and such bonds may be issued without complying with the terms and conditions hereof.

Section 10. The bonds shall be subject to redemption prior to maturity in accordance with the terms set out in the bond form. 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.

Section 11. The City shall cause proper books of accounts and records to be kept (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues, and such books shall be available for inspection by any Bondholder at reasonable times and under reasonable circumstances. The City agrees to have its financial statements audited by the Joint Legislative Auditing Committee, Division of Legislative Audit of the State of Arkansas, or, at the option of the City, an Accountant, and a copy of the audit shall be delivered to each Bondholder within 45 days after it is received by the City.

Section 12. If there be any default in the payment of the principal of or interest on any of the bonds, or if the City defaults in any Bond Fund requirement or in the performance of any of the other covenants contained in this Ordinance, any Bondholder may, by proper suit, compel the performance of the duties of the officials of the City under this Ordinance and under the laws of Arkansas.

No remedy conferred upon or reserved to Bondholders is intended to be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or by law.

No delay or omission of the Bondholders 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 Bondholders may be exercised from time to time and as often as may be deemed expedient.

In any proceeding to enforce the provisions of this Ordinance any plaintiff Bondholder shall be entitled to recover from the City all costs of such proceeding, including reasonable attorneys' fees.

Section 13. The terms of this Ordinance shall constitute a contract between the City and the Bondholders, and the City will at all times strictly adhere to the terms and provisions hereof and fully discharge all of its obligations hereunder. However, the Bondholders may, from time to time, approve the adoption of supplemental ordinances for the purpose of amending or rescinding any of the terms or provisions contained in this Ordinance or in any supplemental ordinance.

Section 14. (a) Moneys held for the credit of the Bond Fund shall be continuously invested and reinvested in Permitted Investments (as hereinafter defined), 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 the payment date for interest or principal and interest.

(b) Moneys held for the credit of the Construction Fund and the Franchise Fee Fund or any other fund shall be continuously invested and reinvested by the City in Permitted Investments 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 the moneys held for the credit of the particular fund will be required for purposes intended.

(c) 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.

(d) "Permitted Investments" are defined as (i) 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 (ii) time deposits or certificates of deposit of banks which are insured by the FDIC, or, if in excess of insurance coverage, collateralized by Government Securities.

Section 15. When the bonds have been executed and sealed, they shall be delivered to the Bondholders upon payment of the purchase price. The accrued interest shall be deposited into the Bond Fund. The remainder of the purchase price shall be deposited into a special account in the name of the City designated "1999 Civic Center Construction Fund" (the "Construction Fund") in a depository or depositories designated by the City that are members of FDIC. The moneys in the Construction Fund shall be disbursed solely in payment of the costs of accomplishing the Project, paying necessary expenses incidental thereto, and paying expenses of issuing the bonds. Disbursements shall be on the basis of checks which shall contain at least the following information: the person to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. Each check must be signed by the City Treasurer.

When the Project has been completed and all required expenses paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Project 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 or depositories of

the Construction Fund, and upon receipt thereof the depository of the Construction Fund shall transfer any remaining balance to the Bond Fund and used to redeem the bonds.

Section 16. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or conditions 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 Internal Revenue Code of 1986, as amended (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 Project 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.

(c) The 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 1999 are not expected to exceed \$10,000,000. In addition, the City represents that the aggregate principal amount of its tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code) including those bonds of its subordinate entities, issued in calendar year 1999 are not expected to exceed \$5,000,000.

(d) 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 shall prohibit investments in bonds issued by the United States Treasury.

(e) 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 bonds are issued, a statement required by Section 149(e) of the Code.

(f) The City covenants that it will not reimburse itself from proceeds of the bonds for costs paid prior to the date the bonds are issued except in compliance with United States Treasury Regulation No. 1.150-2.

Section 17. Any references in this Ordinance to "Bondholder" shall, when appropriate, be deemed to include an original Bondholder or any registered assign thereof.

Section 18. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Section 19. All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 20. It is hereby ascertained and declared that the Project is immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The Project cannot be accomplished without the issuance of the bonds, which cannot be sold at the interest rates specified herein unless this Ordinance is immediately effective. 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: July 15, 1999.

ATTEST:

Mary Freeman  
City Clerk

APPROVED:

C. T. Hallingshead  
Mayor

(SEAL)