

ORDINANCE NO. 7-14

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX BONDS, SERIES 2014 FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COST OF CAPITAL IMPROVEMENTS; PLEDGING COLLECTIONS OF A 0.75% 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 Fort Smith, Arkansas (the "City") the questions of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (the "State") and under Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), capital improvement bonds as follows: (a) bonds in the maximum principal amount of \$55,380,000 for the purpose of refunding the City's outstanding Sales and Use Tax Refunding and Improvement Bonds, Series 2006 (the "Series 2006 Bonds"), Sales and Use Tax Bonds, Series 2008 (the "Series 2008 Bonds") and Sales and Use Tax and Water and Sewer Revenue Bonds, Series 2009 (the "Series 2009 Bonds"); (b) bonds in the maximum principal amount of \$71,070,000 to finance all or a portion of the costs of extensions, betterments and improvements to the City's wastewater system, including particularly, without limitation, wet weather sewer improvements, and any facility, land or equipment acquisition therefor (the "Wastewater Improvements"); (c) bonds in the maximum principal amount of \$28,120,000 to finance all or a portion of the costs of extensions, betterments and improvements to the City's water system, including particularly, without limitation, water transmission improvements, water storage and pump stations, and any land or equipment acquisition therefor (the "Water Improvements"); (d) bonds in the maximum principal amount of \$9,110,000 to finance all or a portion of the costs of firefighting facilities and apparatus, including particularly, without limitation, apparatus replacements, a new fire station, and improvements to existing fire stations and any land acquisition, parking, equipment, furnishings and utility improvements therefor (the "Firefighting Improvements"); and (e) bonds in the maximum principal amount of \$4,260,000 to finance a portion of the costs of an aquatic center consisting of swimming and other recreational facilities and any parking, equipment, furnishings and utility improvements therefor (the "Aquatic Center Improvements"); and

WHEREAS, at the special election held March 13, 2012, a majority of the electors voting on the questions approved the issuance of such bonds; and

WHEREAS, pursuant to Ordinance No. 31-12 of the City duly adopted on April 17, 2012, as amended by Ordinance No. 53-12 of the City, adopted on July 17, 2012 (collectively, "Ordinance No. 31-12"), the City has issued its Sales and Use Tax Refunding and Improvement Bonds, Series 2012 (the "Series 2012 Bonds") to finance all or a portion of the costs of the Wastewater Improvements, the Water Improvements, the Firefighting Improvements, the Aquatic Center Improvements and the refunding of the Series 2006 Bonds, the Series 2008 Bonds and the Series 2009 Bonds (the "Refunding"); and

WHEREAS, of the authority granted for the issuance of bonds at the March 13, 2012 special election, all of the bonds for the Aquatic Center Improvements, the Firefighting Improvements and the Refunding have been issued and there remains unissued \$29,127,142.68 in principal amount of bonds approved for Wastewater Improvements and \$6,199,986.47 in principal amount of bonds approved for Water Improvements; and

WHEREAS, the Board of Directors is prepared to proceed with the issuance of the second series of bonds in aggregate principal amount of \$34,295,000 designated as "City of Fort Smith, Arkansas Sales and Use Tax Bonds, Series 2014" (the "Series 2014 Bonds"); and

WHEREAS, the Series 2014 Bonds are being issued pursuant to Ordinance No. 31-12 as "Additional Parity Bonds" thereunder; and

WHEREAS, the principal amount of the Series 2014 Bonds is allocated as follows: \$28,276,227.50 for the Wastewater Improvements; and \$6,018,772.50 for the Water Improvements; and

WHEREAS, the City has made arrangements for the sale of the Series 2014 Bonds to Stephens Inc. and Raymond James & Associates, Inc. (collectively, the "Purchaser"), at a price of \$35,035,662.75 (principal amount less Underwriter's discount of \$288,078 plus net original issue premium of \$1,028,740.75), plus accrued interest (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 January 8, 2014, offering the Series 2014 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 BancorpSouth Bank, Stuttgart, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the Series 2014 Bonds, has been presented to and is before this meeting;

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

Section 1. The offer of the Purchaser for the purchase of the Series 2014 Bonds from the City at the Purchase Price, for Series 2014 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 2014 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 2014 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 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 2014 Bonds are hereby authorized and ordered issued in the total principal amount of \$34,295,000, the proceeds of the sale of which are necessary to provide funds for the Water Improvements and the Wastewater Improvements (collectively, the “2014 Improvements”), for the funding of a debt service reserve and for the payment of expenses of issuing the Series 2014 Bonds.

The Series 2014 Bonds shall bear interest at the rates and shall mature on May 1 in the amounts and in the years as follows:

<u>Year</u> <u>(May 1)</u>	<u>Amount</u>	<u>Interest Rate</u>
2015	\$1,105,000	2.000%
2016	1,130,000	3.000
2017	1,160,000	3.000
2018	1,195,000	3.000
2019	1,235,000	3.000
2020	1,275,000	4.000
2021	1,325,000	4.000
2022	1,375,000	4.000
2023	1,430,000	5.000
2024	1,505,000	4.500
2025	1,570,000	3.375
2027*	7,170,000	3.750
2028	10,875,000	2.750
2029	1,945,000	1.000

* Term Bond

The Series 2014 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 2014 Bonds shall be numbered from 1 upward in order of issuance. Each Series 2014 Bond shall have a CUSIP number but the failure of a CUSIP number to appear on any Series 2014 Bond shall not affect its validity.

Each Series 2014 Bond shall be dated as of February 1, 2014. Interest on the Series 2014 Bonds shall be payable on May 1, 2014, 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 2014 Bond is registered on the registration books of the City maintained by BancorpSouth Bank, Stuttgart, 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 2014 Bonds in the aggregate principal amount of \$1,000,000 or more. Principal of the Series 2014 Bonds shall be payable at the principal corporate trust office of the Trustee.

Each Series 2014 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 February 1, 2014, 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 2014 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 2014 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 2014 Bond shall be conclusive evidence that such bond has been authenticated and delivered under this Ordinance. The Certificate on any Series 2014 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 2014 Bonds.

Section 5. The Series 2014 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 2014 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 2014 Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten Series 2014 Bond for each stated maturity date and interest rate which shall be immobilized in the custody of DTC with the beneficial

owners having no right to receive the Series 2014 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 2014 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 2014 Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Series 2014 Bonds. The Series 2014 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 2014 Bonds for use in a book-entry system, the City 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 2014 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 2014 Bonds from the securities depository, and authenticate and deliver Series 2014 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 2014 Bonds) of the City or of the beneficial owners of the Series 2014 Bonds.

Prior to issuance of the Series 2014 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 2014 Bonds so long as the Series 2014 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 2014 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 2014 Bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of Series 2014 Bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Section 6. The Series 2014 Bonds and the Trustee's Certificate 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 Series 2014 Bond)

REGISTERED
No. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF SEBASTIAN
CITY OF FORT SMITH
SALES AND USE TAX BOND
SERIES 2014

Interest Rate: _____ %
Dated Date: February 1, 2014
Registered Owner: _____
Principal Amount: _____

Maturity Date: May 1, _____
CUSIP No.: _____

_____ Dollars

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fort Smith, County of Sebastian, 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 BancorpSouth Bank, Stuttgart, 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 Fort Smith, Arkansas Sales and Use Tax Bonds, Series 2014, aggregating Thirty-Four Million Two Hundred Ninety-Five Thousand Dollars (\$34,295,000) in aggregate principal amount (the "bonds"), and is issued for the purpose of financing the costs of accomplishing wastewater improvements and water improvements, paying necessary expenses incidental thereto, funding 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 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. 31-12 of the City duly adopted on April 17, 2012, as amended by Ordinance No. 53-12 of the City duly adopted on July 17, 2012, and Ordinance No. 7-14 of the City duly adopted on January 21, 2014 (collectively, the "Authorizing Ordinance"), and an election duly held on March 13, 2012 at which the majority of the legal voters of the City voting on the questions 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 derived by the City from a 0.75% sales and use tax (the "Tax") levied by the City under the Authorizing Legislation and Ordinance No. 1-12 of the City duly adopted on January 3, 2012, and the City hereby pledges its collections of the Tax for the payment of the bonds on a parity of security with the City's Sales and Use Tax Refunding and Improvement Bonds, Series 2012 (the "Series 2012 Bonds").

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

(1) The bonds shall be redeemed by the City from proceeds of the bonds not needed for the intended purposes and Surplus Tax Collections (defined below), 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.

The City has covenanted in the Authorizing Ordinance that "Surplus Tax Collections", being collections from the Tax in excess of the amount necessary to (1) insure the prompt payment of the principal of, interest on and Trustee's and administrative fees and expenses in connection with the bonds and the Series 2012 Bonds (or any additional parity bonds issued to refund the Series 2012 Bonds ("Additional Parity Bonds")) as the same become due, (2) establish and maintain the Debt Service Reserve Account in the required amount, and (3) make any arbitrage rebate payment due the United States, must be used from time to time, at least annually, as and to the extent available, to redeem outstanding bonds prior to maturity. The moneys in the Debt Service Reserve Account shall be considered Surplus Tax Collections when making the redemption in full of the bonds and the Series 2012 Bonds.

While the Series 2012 Bonds or Additional Parity Bonds are outstanding, the City shall use 50% of the Surplus Tax Collections to redeem the bonds and 50% of the Surplus Tax Collections to redeem the Series 2012 Bonds or Additional Parity Bonds. If there are no Series 2012 Bonds or Additional Parity Bonds outstanding, the City shall apply 100% of the Surplus Tax Collections to the redemption of the bonds. In the event of a redemption from Surplus Tax Collections or from bond proceeds, the bonds shall be redeemed in inverse order of maturity and by lot within a maturity in such manner as the Trustee shall determine.

In the case of any defeasance of the bonds, redemption of defeased bonds shall be scheduled on the basis of the mandatory redemption requirements and assuming annual Tax receipts in an amount equal to Tax receipts for a twelve-month period that ends not less than 30 and not more than 90 days prior to the defeasance.

(2) The bonds may be redeemed at the option of the City from funds from any source, on and after May 1, 2024, 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 bonds shall be called for redemption, the particular maturities and interest rates of the bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the bonds of any one maturity and interest rate shall be called for redemption, the particular bonds or portion thereof to be redeemed from such maturity and interest rate shall be selected by lot by the Trustee.

(3) To the extent not previously redeemed, the bonds maturing on May 1, 2027 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:

Bonds Due May 1, 2027

<u>Year</u> <u>(May 1)</u>	<u>Principal Amount</u>
2026	\$1,625,000
2027 (maturity)	5,545,000

In case any outstanding bond is in a denomination greater than \$5,000, each \$5,000 of face value of such bond shall be treated as a separate bond of the denomination of \$5,000.

Notice of redemption identifying the bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed and the date they shall be presented for payment shall be given by the Trustee, not less than 30 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 is transferable by the Registered Owner shown above in person or by his attorney-in-fact duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this bond. Upon such transfer a new fully registered bond or bonds of the same maturity and interest rate, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. This bond is issued with the intent that the laws of the State shall govern its construction.

The City and the Trustee may deem and treat the Registered Owner shown above as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The bonds are issuable only as fully registered bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, fully registered bonds may be exchanged for a like aggregate principal amount of fully registered bonds of the same maturity and interest rate of other authorized denominations.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed, under the Constitution and laws of the State, particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, precedent to and in the issuance of this bond have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by this bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that a tax sufficient to pay the bonds and interest thereon has been duly levied and receipts derived therefrom are pledged to the payment of the bonds in accordance with the Authorizing Legislation.

This bond shall not be valid until it shall have been authenticated by the Certificate hereon duly signed by the Trustee.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas has caused this bond to be executed by its Mayor and City Clerk and its corporate seal to be impressed or imprinted on this bond, all as of the Dated Date shown above.

CITY OF FORT SMITH, ARKANSAS

ATTEST:

By _____
Mayor

City Clerk

(SEAL)

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds issued under the provisions of the within mentioned Authorizing Ordinance.

Date of Authentication: _____.

BANCORPSOUTH BANK
Stuttgart, Arkansas
TRUSTEE

By _____
Authorized Signature

(A Form of Assignment shall be attached to the bonds.)

Section 7. The City hereby expressly pledges and appropriates all of the revenues derived by the City from the 0.75% sales and use tax (the "Tax") levied by Ordinance No. 1-12, adopted January 3, 2012 to the payment of the principal of and interest on the Series 2014 Bonds on a parity with the Series 2012 Bonds. The Series 2014 Bonds are being issued as Additional Parity Bonds under Ordinance No. 31-12 and shall be a part of "the bonds" within the meaning of such ordinance. In this regard, all provisions of Ordinance No. 31-12 pertaining to "the bonds" shall inure and appertain to the Series 2014 Bonds to the same extent and with like force and effect as if herein set out in full. The effect of the above provisions shall be to continue the applicable provisions of Ordinance No. 31-12 in full force and effect after the Series 2012 Bonds are paid or provision is made therefor.

Section 8. The Series 2014 Bonds shall be callable for payment prior to maturity in accordance with the terms set out in the face of the bond form set forth in Section 6 of this Ordinance. The City hereby covenants to use Series 2014 Bond proceeds not necessary for the purposes intended to redeem Series 2014 Bonds on the first available interest payment date.

Section 9. When the Series 2014 Bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to the Purchaser upon payment of the Purchase Price. The accrued interest shall be deposited in the Bond Fund established by Ordinance No. 31-12. The expenses of issuing the Series 2014 Bonds as set forth in the delivery instructions to the Trustee signed by the Mayor and City Clerk shall be paid from the Purchase Price.

The amount necessary from the Purchase Price to increase the amount in the Debt Service Reserve Account established by Ordinance No. 31-12 to its required level shall be deposited therein.

The balance of the Purchase Price shall be deposited in two special accounts of the City hereby created in one or more banks or trust companies that are members of the Federal Deposit Insurance Corporation (each a "Construction Fund"). Moneys shall be allocated between the Construction Funds in proportion to the principal amount of Series 2014 Bonds allocated for each purpose. Each Construction Fund shall be designated to reflect the series of the bonds and the purpose, e.g., "Series 2014 Wastewater Construction Fund." The amounts credited to each Construction Fund shall be expended to accomplish the purpose for which the account was created. Issuance costs and other expenses not specific to any one purpose shall be joint obligations to be paid from each Construction Fund in proportion to the initial moneys credited thereto. Disbursements shall be made from each Construction Fund on the basis of checks or requisitions which shall specify: the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; and the purpose by general classification of the payment. Each check or requisition must be signed by the City Administrator or Deputy City Administrator and the City Treasurer. The City shall keep records as to all payments made from the Construction Funds.

Moneys in each Construction Fund shall also be used to pay the principal of and interest on the Series 2014 Bonds when due on a pro rata basis if moneys in the Bond Fund are not sufficient for that purpose.

When the 2014 Improvements of a particular type (e.g., wastewater improvements) have been completed and all required expenses paid and expenditures made from the related Construction Fund for and in connection with the accomplishment of such 2014 Improvements and the financing thereof, this fact shall, if moneys remain in such Construction Fund, 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 such Construction Fund have been discharged. A copy of the certificate shall be filed with the Trustee. The City shall transfer any remaining balance to the Redemption Account in the Bond Fund.

Section 10. (a) Moneys held for the credit of each Construction Fund may be invested and reinvested in Permitted Investments (as defined in Ordinance No. 31-12) or other investments permitted by State 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 such money will be required for the purposes intended.

(b) Obligations purchased as an investment of each Construction Fund shall be deemed at all times a part of such fund. Any profit or loss realized on investments of moneys in any fund shall be charged to said fund.

Section 11. (a) The City covenants that it will not reimburse itself from Series 2014 Bond proceeds for any costs paid prior to the date the Series 2014 Bonds are issued except in compliance with United States Treasury Regulation No. 1.150-2 (the "Regulation"). This Ordinance shall constitute an "official intent" for the purpose of the Regulation.

(b) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Bond Fund to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Non-purpose Investments (as therein defined) attributable to the Series 2014 Bonds, other than investments attributable to such excess over (B) the amount which would have been earned if such Non-purpose Investments attributable to the Series 2014 Bonds were invested at a rate equal to the Yield (as defined in the Code) on the Series 2014 Bonds, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant to advise the City in making the determination required to comply with this subsection (b). Anything herein to the contrary notwithstanding this provision may be modified or rescinded if in the opinion of Bond Counsel such modification or rescission will not affect the tax-exempt status of the Series 2014 Bonds for federal income tax purposes.

Section 12. 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. The City further 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 Series 2014 Bonds are issued, a statement concerning the Series 2014 Bonds which contains the information required by Section 149(e) of the Code.

Section 13. The Mayor, and other officers of the City in accordance with their offices, are authorized to execute such writings and take such action as may be appropriate to cause the bonds to be issued.

Section 14. The provisions of this Ordinance are separable and in the event that any section or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of this Ordinance.

Section 15. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 16. It is hereby ascertained and declared that the 2014 Improvements are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The 2014 Improvements cannot be accomplished without the issuance of the Series 2014 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: January 21, 2014.

ATTEST:

Sherril Gard
City Clerk

APPROVED:

Sandy Sander
Mayor

(SEAL)



CERTIFICATE

The undersigned, City Clerk of the City of Fort Smith, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 7-14, passed at a regular session of the Board of Directors of the City, held at the regular meeting place of the Board, at 6:00 o'clock p.m. on the 21st day of January, 2014, and that the Ordinance is of record in Ordinance Record Book No. at Page , now in my possession.

GIVEN under my hand and seal this 22nd day of January, 2014.



Shirri Gard
City Clerk