

ORDINANCE NO. 79-15

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER AND SEWER REFUNDING AND CONSTRUCTION REVENUE BONDS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Fort Smith, Arkansas (the "City") owns and operates its (combined) water and sewer system (the "System"); and

WHEREAS, the Board of Directors of the City has determined that the System is in need of extensions, betterments and improvements in order for the City and its inhabitants to have necessary and proper water and sewer facilities and for the City to meet specific requirements set forth in the Consent Decree entered against the City for violations of the Clean Water Act (the "Improvements"); and

WHEREAS, the City has outstanding an issue of Water and Sewer Revenue Bonds, Series 2005B (the "Refunded Bonds") authorized by Ordinance No. 75-05, adopted November 15, 2005, the proceeds of which were used to finance the cost of acquiring, constructing and equipping improvements to the water facilities of the System; and

WHEREAS, in order to achieve debt service savings, it is in the interest of the City that the Refunded Bonds be refunded; and

WHEREAS, the Board of Directors of the City has determined that the City should proceed with the issuance of water and sewer refunding and construction revenue bonds in the principal amount of \$35,000,000 (the "Bonds") to finance all or a portion of the Improvements and to refund the Refunded Bonds; and

WHEREAS, the City has outstanding the following issues of bonds secured by a pledge of System revenues senior to the pledge in favor of the Bonds: Water and Sewer Revenue Bonds, Series 2007 and Water and Sewer Refunding and Construction Revenue Bonds, Series 2008 (collectively, the "Senior Bonds"); and

WHEREAS, the City has outstanding its Water and Sewer Refunding Revenue Bonds, Series 2011 (the "2011 Bonds"), authorized by Ordinance No. 74-11, adopted on October 4, 2011 (the "2011 Ordinance"), and its Water and Sewer Refunding Revenue Bonds, Series 2012 (the "2012 Bonds" and, collectively with the 2011 Bonds, the "Parity Bonds"), authorized by Ordinance No. 6-12, adopted on January 17, 2012 (the "2012 Ordinance" and, collectively with the 2011 Ordinance, the "Parity Ordinances"); and

WHEREAS, the parity provisions of the Parity Ordinances have been or will be met so that the Bonds can be issued on a parity of security with the Parity Bonds; and

WHEREAS, the Preliminary Official Statement, dated November 11, 2015, offering the 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 Bonds, has been presented to and is before this meeting; and

WHEREAS, the City has made arrangements for the sale of the Bonds to Stephens Inc. and Raymond James & Associates, Inc. (the "Underwriters") pursuant to a Bond Purchase Agreement (the "Purchase Agreement") which 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 refunding of the Refunded Bonds, by use of the proceeds of the Bonds and other available funds, is hereby authorized. The Refunded Bonds shall be redeemed in full on the date the Bonds are issued or the first practicable date thereafter. The Mayor and other officials of the City are hereby authorized to take, or cause to be taken, all action necessary to accomplish the refunding and to execute all required contracts.

Section 2. The Preliminary Official Statement is hereby approved and the use of the Preliminary Official Statement in connection with the sale of the Bonds is hereby authorized, and the Mayor 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 for use in connection with the sale of the Bonds.

Section 3. The Board of Directors hereby finds and declares that the period of usefulness of the System will be more than 30 years, which is longer than the term of the Bonds.

Section 4. The sale of the Bonds to the Underwriters pursuant to the terms and conditions set out in the Purchase Agreement at a price of \$37,127,261.60 (principal amount of \$35,000,000 less \$297,500 of Underwriters' discount plus net original issue premium of \$2,424,761.60) plus accrued interest (the "Purchase Price") for Bonds bearing interest, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and the same are hereby, approved and confirmed. The Purchase Agreement is approved and the Mayor is authorized to execute and deliver it on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Purchase Agreement.

Section 5. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Arkansas Code of 1987 Annotated, Title 14, Chapter 234, Subchapter 2, Title 14, Chapter 235, Subchapter 2, and Title 14, Chapter 164, Subchapter 4, and applicable decisions of the Supreme Court of the State of Arkansas, including City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2d 12 (1946), City of Fort Smith, Arkansas Water and Sewer Refunding and Construction Revenue Bonds, Series 2015 are hereby authorized and ordered issued in the principal amount of \$35,000,000 for the purpose of financing all or a portion of the costs of the

Improvements and the refunding of the Refunded Bonds, providing a debt service reserve and paying necessary expenses incidental thereto and to the issuance of the Bonds. The Bonds shall be dated December 1, 2015, with interest payable semiannually on April 1 and October 1 of each year, commencing April 1, 2016, shall be numbered consecutively from 1 upward, in order of issuance, and shall be in the denomination of \$5,000 or an integral multiple thereof. The Bonds shall mature on October 1 in the years, in the amounts and shall bear interest as follows:

<u>Year</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate (%)</u>
2016	\$945,000	2.000
2017	850,000	2.000
2018	865,000	4.000
2019	900,000	4.000
2020	940,000	4.000
2021	975,000	5.000
2022	1,025,000	3.000
2023	1,055,000	5.000
2024	1,105,000	5.000
2026*	2,365,000	3.000
2027	1,235,000	5.000
2028	1,295,000	5.000
2029	1,360,000	5.000
2030	1,430,000	5.000
2035*	8,290,000	5.000
2040*	10,365,000	4.000

*Term Bonds

Payment of each installment of interest shall be made to the person in whose name the Bond is registered on the registration books of the City maintained by BancorpSouth Bank, Stuttgart, Arkansas, as Trustee (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.

The 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 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 Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten 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 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 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 Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Bonds. The 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 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 beneficial owners of all outstanding 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 Bonds from the securities depository, and authenticate and deliver 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 Bonds) of the City, if the City fails to maintain a securities depository/book-entry system, or of the beneficial owners, if they request termination of the system.

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

Each 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 December 1, 2015, 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 Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 7 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No 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 upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Certificate on any 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 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, 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 keep or cause to be kept 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.

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. The City shall not 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 of 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 (and premium, if any) 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 6. 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, shall be payable solely out of the 2015 Water and Sewer Revenue Bond Fund, hereafter described, and shall be a valid claim of the owners thereof only against such fund and the amount of revenues pledged thereto, which revenues are hereby pledged and mortgaged for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal, premium, if any, interest and Trustee's fees on and in connection with the Bonds and to make other disbursements authorized hereby.

The pledge of System revenues in favor of the Bonds is (1) subordinate to the pledge of System revenues in favor of the Senior Bonds and (2) on a parity with the pledge of System revenues in favor of the Parity Bonds. The Bonds shall not constitute an indebtedness of the City within any constitutional or statutory limitation.

Section 7. 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)

REGISTERED

REGISTERED

No. _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF SEBASTIAN
CITY OF FORT SMITH
WATER AND SEWER REFUNDING AND
CONSTRUCTION REVENUE BOND
SERIES 2015

Interest Rate: _____%

Maturity Date: October 1, ____

Dated Date: December 1, 2015

Registered Owner: Cede & Co.

Principal Amount: _____ Dollars

CUSIP No.: _____

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fort Smith, Arkansas (the "City"), for value received, hereby promises to pay, but solely from the source as hereinafter provided and not otherwise, to the Registered Owner shown above, upon the presentation and surrender hereof at the principal corporate office of BancorpSouth Bank, in Stuttgart, Arkansas, or its successor or successors, as Trustee (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 interest thereon, but solely from the source as hereinafter provided and not otherwise, in like coin or currency, at the Interest Rate per annum shown above, payable semiannually on the 1st days of April and October of each year, commencing April 1, 2016, until payment of such principal sum 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. Interest on this Bond is payable from the interest payment date next preceding the date on which this Bond is authenticated unless this Bond is authenticated on an interest payment date, in which case it shall bear interest from such date, or unless this Bond is authenticated prior to April 1, 2016, in which case it shall bear interest from the Dated Date shown above, or unless this Bond 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 of this Bond interest is in default hereon, in which case it shall bear interest from the date to which interest has been paid.

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 is one of an issue of City of Fort Smith, Arkansas Water and Sewer Refunding and Construction Revenue Bonds, Series 2015, aggregating Thirty Five Million Dollars (\$35,000,000) in principal amount (the "Bonds"), and is issued for the purpose of financing all or a portion of the cost of acquiring, constructing and equipping extensions, betterments and improvements to the water and sewer facilities of the City's municipal water and sewer (combined) system (the "System") and refunding the City's Water and Sewer Revenue Bonds, Series 2005B.

THE BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY TITLE 14, CHAPTER 234, SUBCHAPTER 2, TITLE 14, CHAPTER 235, SUBCHAPTER 2 AND TITLE 14, CHAPTER 164, SUBCHAPTER 4 OF THE ARKANSAS CODE OF 1987 ANNOTATED AND APPLICABLE DECISIONS OF THE SUPREME COURT OF THE STATE OF ARKANSAS, INCLUDING CITY OF HARRISON V. BRASWELL, 209 ARK. 1094, 194 S.W.2d 12 (1946) AND PURSUANT TO ORDINANCE NO. _____, DULY ADOPTED ON _____, 2015 (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 by and payable solely from the revenues derived from the operation of the System. The pledge of System revenues in favor of the Bonds is (a) subordinate to the pledge in favor of the City's Water and Sewer Revenue Bonds, Series 2007, and Water and Sewer Refunding and Construction Revenue Bonds, Series 2008 and (b) on a parity with the pledge in favor of the City's Water and Sewer Refunding Revenue Bonds, Series 2011 and Series 2012. An amount of System revenues sufficient to pay the principal of and interest on the Bonds has been duly pledged and set aside into the 2015 Water and Sewer Revenue Bond Fund established by 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, the reservation of the power to issue additional (parity) bonds, and the rights and obligations of the City, the Trustee and the owners of the Bonds.

The Bonds are subject to optional and mandatory sinking fund redemption prior to maturity as follows:

1. The Bonds may be redeemed at the option of the City, from funds from any source, in whole at any time or in part on any interest payment date, on and after October 1, 2025, 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 to be redeemed shall be selected by the City in its discretion. If fewer than all of the Bonds of any one maturity shall be called for redemption, the particular Bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

2. To the extent not previously redeemed, the Bonds maturing on October 1 in the years 2026, 2035 and 2040 are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on October 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 Maturing October 1, 2026

<u>Year</u>	<u>Principal Amount</u>
2025	\$1,165,000
2026 (maturity)	1,200,000

Bonds Maturing October 1, 2035

<u>Year</u>	<u>Principal Amount</u>
2031	\$1,500,000
2032	1,575,000
2033	1,655,000
2034	1,735,000
2035 (maturity)	1,825,000

Bonds Maturing October 1, 2040

<u>Year</u>	<u>Principal Amount</u>
2036	\$1,915,000
2037	1,990,000
2038	2,070,000
2039	2,155,000
2040 (maturity)	2,235,000

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 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; or by other standard means, including facsimile transmissions and electronic communications, 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. With respect to notice of redemption of the Bonds, unless moneys sufficient to pay the principal of an premium, if any, and interest on the Bonds to be redeemed shall have been received by the Trustee prior to the giving of such notice, such notice shall state that such redemption shall be conditional upon the receipt of such moneys by the Trustee on or prior to the date fixed for such redemption.

The City and the Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon 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, Bonds may be exchanged for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations.

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 premium, if any, and interest on the Bonds as the same become due and payable will be sufficient in amount for that purpose.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Authorizing Ordinance until the Certificate of Authentication hereon shall have been 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 on this Bond, all as of the Dated Date shown above.

CITY OF FORT SMITH, ARKANSAS

ATTEST:

City Clerk
(SEAL)

By _____
Mayor

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds designated Water and Sewer Refunding and Construction Revenue Bonds, Series 2015, in and issued under the provisions of the within mentioned Authorizing Ordinance.

BANCORPSOUTH BANK
TRUSTEE

By _____
Authorized Signature

Date of Authentication: _____

(A Form of Assignment shall be attached to each Bond.)

Section 8. (a) The rates charged for services of the System heretofore fixed, and the conditions, rights and obligations pertaining thereto, as set out in the ordinances fixing such rates, are hereby ratified, confirmed and continued.

The City covenants that the rates shall never be reduced while any of the Bonds are outstanding unless there is obtained from an independent certified public accountant ("Accountant") a certificate that the Net Revenues of the System (being defined as gross revenues of the System less the amounts required to pay the costs of operation, maintenance and repair of the System, including all expense items properly attributable to the operation and maintenance of the System in accordance with generally accepted accounting principles applicable to municipal water and sewer systems (excluding depreciation, interest and amortization expenses)), with the reduced rates, will be at least equal to 110% of the maximum annual principal and interest requirements on all bonds payable from revenues of the System ("System Bonds"), plus the amount needed to make all deposits required to be made into the Depreciation Fund (hereinafter identified) and any debt service reserves for System Bonds and to reimburse the insurers of System Bonds for any amounts owed in connection with debt service reserve fund insurance policies or surety bonds for System Bonds (the "Debt Service Reserve Policies"). The City further covenants that the rates shall, if and when necessary, from time to time, be increased in such manner as will produce net revenues at least equal to 110% of the current year's debt service on all System Bonds and the amount needed to make the deposits into the Depreciation Fund and any debt service reserves for System Bonds and to reimburse the insurers of any System Bonds for any amounts owed in connection with Debt Service Reserve Policies.

(b) The System shall be continuously operated as a revenue producing undertaking, and all moneys received from its operation shall be deposited in such depository or depositories for the City as may be lawfully designated from time to time by the City, subject, however, to the giving of security as now or as hereafter may be required by law, and provided that such depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC").

Section 9. All revenues derived from the operation of the System shall be paid into a special fund heretofore created and designated "Water and Sewer Fund." The revenues in the Water and Sewer Fund shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on the Bonds and other System Bonds, to the maintenance of the debt service reserves at the required level, to the providing of the Depreciation Fund, and otherwise as described herein.

Section 10. There shall first be paid from the Water and Sewer Fund into a special fund heretofore created and designated "Water and Sewer Operation and Maintenance Fund" (the "Operation and Maintenance Fund"), in a bank selected by the City that is a member of FDIC, on the first business day of each month, an amount sufficient to pay the reasonable and necessary monthly expenses of operation, repair and maintenance of the System for such month and from which disbursements shall be made only for those purposes. Fixed annual charges such as insurance premiums and the cost of major repair and maintenance expenses may be computed

and set up on an annual basis, and one-twelfth (1/12) of the amount thereof may be paid into the Operation and Maintenance Fund each month.

If in any month for any reason there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of the deficiency shall be added to the amount otherwise required to be transferred and paid into the fund the next succeeding month. If in any fiscal year a surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount which shall be necessary to defray the reasonable and necessary costs of operation and maintenance of the System during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred into bond funds for System Bonds or into the Depreciation Fund, to the extent of any deficit therein, and in the absence of any such deficit, to the Water and Sewer Fund.

Section 11. After making the deposit into the Operation and Maintenance Fund, there shall be transferred and paid from the Water and Sewer Fund into the "Water and Sewer Revenue Bond Fund" (the "Senior Bond Fund") the deposits required by the ordinances authorizing the Senior Bonds plus any amounts necessary to increase the debt service reserve therein to its required level and to reimburse any insurer of the Senior Bonds for any amounts due under any Debt Service Reserve Policies.

Section 12. After making the payments required above, there shall next be transferred and paid from the Water and Sewer Fund, pro rata, into the bond funds (and debt service reserves therein) being maintained in connection with the Parity Bonds and any additional parity bonds (the "Parity Bond Funds") and into a special fund, created by the Authorizing Ordinance and designated "2015 Water and Sewer Revenue Bond Fund" (the "Bond Fund") in a bank selected by the City that is a member of FDIC, the sums in the amounts and at the times set forth below.

There shall be paid into the Parity Bond Funds the required monthly deposits pursuant to the Parity Bond Ordinances and any additional parity bonds.

There shall be paid into the Bond Fund until all outstanding Bonds, with interest thereon, have been paid in full or provision made for such payment, on the first business day of each month commencing February 2016 (i) a sum equal to 1/6 of the next installment of interest on the Bonds and a sum equal to 1/12 of the next installment of principal due during the then next twelve months (either at maturity or in accordance with any mandatory redemption provisions) on the Bonds (provided that the interest installments through March 2016 shall be increased to 1/2 of the interest on the Bonds due April 1, 2016 and the principal installments through September 2016 shall be increased to 1/8 of the principal of the Bonds due October 1, 2016), plus (ii) an amount sufficient to provide for Trustee's fees, on the Bonds.

If the revenues of the System are insufficient to make the required payment on the first business day of any month into the Bond Fund, 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 on the first business day of the next month.

There is established and shall be maintained within the Bond Fund a "Debt Service Reserve Account," which shall be continuously maintained by the City in an amount equal to the lesser of 10% of the principal amount of the Bonds and the maximum annual principal and interest requirements on the Bonds (the "Required Level"). If the Debt Service Reserve Account is reduced below the Required Level, the City shall make additional payments from the Water and Sewer Fund until the impairment or reduction is corrected over a twelve month period.

If for any reason there shall be a deficiency in payments made into the Bond Fund so that there are unavailable sufficient moneys therein to pay the principal of and interest on the Bonds as the same become due, any sums then held in the Debt Service Reserve Account shall be used to the extent necessary for the payment of the principal of or interest on the Bonds, but the Debt Service Reserve Account shall be reimbursed from the Water and Sewer Fund in the amount of any such payment as described above. The Debt Service Reserve Account shall secure only the Bonds and be used to pay debt service only on the Bonds. The Debt Service Reserve Account shall be used solely as provided herein, but the moneys therein may be invested as hereinafter set forth.

If a surplus shall exist in the Bond Fund over and above the amount required for making all principal and interest payments during the next succeeding twelve-month period, and in excess of the Required Level for the Debt Service Reserve Account, such surplus (1) shall be applied at the direction of the City to the payment of the principal of and interest on Bonds that may be called for redemption prior to maturity or (2) shall be paid to the City and deposited into the Water and Sewer Fund. Otherwise moneys in the Bond Fund shall be used solely for the payment of principal and interest on the Bonds and Trustee's fees.

The City Treasurer shall withdraw from the Bond Fund on or before five business days prior to the due date of any Bond or interest payable therefrom, at maturity or redemption prior to maturity, and deposit with the Trustee at least one business day prior to the due date, an amount equal to the amount of such Bond or interest payment for the sole purpose of paying the same, together with the Trustee's fee.

Section 13. There shall next be paid from the Water and Sewer Fund into a fund heretofore created and designated "Water and Sewer Depreciation Fund" (the "Depreciation Fund"), in a bank, selected by the City, that is a member of the FDIC, on the first business day of each month while any of the Bonds are outstanding, a sum equal to three percent (3%) of the gross revenues of the System for the then preceding month plus \$5,000 per month until there is accumulated the sum of \$500,000. When the sum of \$500,000 has been accumulated, the payments may be discontinued. If the moneys in the Depreciation Fund fall below \$500,000, the monthly payments shall resume until the balance again reaches \$500,000. The moneys in the Depreciation Fund shall be used solely for the purpose of providing for replacements made necessary by the depreciation of the System and for the purpose of paying costs of damage caused by unforeseen catastrophes, except that moneys in the Depreciation Fund shall be used to the extent necessary at any time to prevent default in the payment of principal, interest, and Trustee's fees on the Bonds and any other System Bonds.

If in any fiscal year a surplus shall be accumulated in the Depreciation Fund over and above the amount which shall be necessary to cover probable replacement costs during the

current fiscal year and the next ensuing fiscal year, such surplus may be transferred to the Senior Bond Fund and the Bond Fund, to the extent of any deficit therein, and, in the absence of any such deficit, to the Water and Sewer Fund.

Section 14. Any surplus in the Water and Sewer Fund, after making all required disbursements and making full provision for the funds herein described shall be used for the payment of interest on amounts advanced under the Debt Service Reserve Policies for System Bonds and any amounts owed the insurers of the System Bonds, and may be used, at the option of the City, for the redemption of System Bonds prior to maturity in accordance with their respective redemption provisions; for constructing extensions, betterments and improvements to the System; or for any other lawful municipal purpose.

Section 15. As long as any of the Bonds are outstanding, the City shall not issue or attempt to issue any bonds claimed to be entitled to a priority of lien on the revenues of the System over the lien securing the Bonds.

The City may issue additional bonds to finance or refinance the cost of constructing extensions, betterments and improvements to the System. However, the City may not authorize or issue any such additional bonds ranking on a parity of security with outstanding Bonds, unless and until either: (1) there shall have been procured and filed with the Trustee a statement by an Accountant reciting that, based upon necessary investigation, the Net Revenues of the System for the fiscal year immediately preceding the fiscal year in which it is proposed to issue such additional bonds shall equal not less than 125% of the average annual principal and interest requirements on the System Bonds then outstanding and the additional bonds proposed to be issued; or (2) there shall have been procured and filed with the Trustee a statement by an Accountant reciting, based upon necessary investigation, that the Net Revenues of the System for the next ensuing fiscal year as reflected by a certificate of a duly qualified consulting engineer not in the regular employ of the City and approved by the Trustee, and taking into consideration any rate increase, shall be equal to not less than 130% of the average annual principal and interest requirements on all of the System Bonds then outstanding and the additional bonds then proposed to be issued. For purposes of the required computation, there may be added to the Net Revenues of the System of the fiscal year immediately preceding the fiscal year in which it is proposed to issue additional bonds the following: if prior to the issuance of the additional bonds and subsequent to the first day of such preceding fiscal year the City shall have increased the rates charged for water services or sewer services, the additional net revenues which would have been received from the operation of the System had the increase been in effect throughout such fiscal year. For purposes of the required computation, there shall be added to the average annual principal and interest requirement any amounts due and owing under any Debt Service Reserve Policies.

The additional bonds the issuance of which is restricted and conditioned as hereinabove described shall not be deemed to include other obligations the security and source of payment of which is subordinate and subject to the priority of the Bonds.

Section 16. The City will keep proper books of accounts and records (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the operation of the System, and such books shall be available for

inspection by the owner of any of the Bonds at reasonable times and under reasonable circumstances. The City agrees to have these records audited by an Accountant at least once each year. A copy of the audit shall be delivered to the Trustee not later than 180 days after the end of each fiscal year and shall be made available to any Bondholder making request therefor. In the event that the City fails or refuses to make the audit, the Trustee or any owner of the Bonds, may have the audit made, and the cost thereof shall be charged against the Operation and Maintenance Fund.

Section 17. The City covenants that it will maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. The City agrees that, to the extent that comparable protection is not otherwise provided to the satisfaction of the Trustee, it will insure and at all times keep insured, in the amount of the full insurable value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State of Arkansas to assume the risk thereof, properties of the System, to the extent that such properties would be covered by insurance by private companies engaged in similar types of businesses, against loss or damage thereto from fire and other perils included in extended coverage insurance in effect in Arkansas. The insurance policies are to carry a clause making them payable to the Trustee as its interest may appear, and are either to be placed in the custody of the Trustee or satisfactory evidence of such insurance shall be filed with the Trustee. In the event of loss, the proceeds of such insurance shall be applied solely toward the reconstruction, replacement or repair of the System, and in such event the City will, with reasonable promptness, cause to be commenced and completed the reconstruction, replacement and repair work. If such proceeds are more than sufficient for such purposes, the balance remaining shall be deposited to the credit of the Water and Sewer Fund, and if such proceeds shall be insufficient for such purposes the deficiency shall be supplied first from moneys in the Depreciation Fund and second from moneys in the Operation and Maintenance Fund and third from surplus moneys in the Water and Sewer Fund. Nothing shall be construed as requiring the City to expend any moneys for operation and maintenance of the System or for premiums on its insurance which are derived from sources other than the operation of the System, but nothing shall be construed as preventing the City from doing so.

Section 18. The Bonds shall be subject to redemption prior to maturity as set forth in Section 7 hereof. 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. Therefore, in calculating the monthly payments to be deposited into the Bond Fund, the term "next installment of principal" shall include the principal of the Bonds maturing on the next principal payment date and the principal of the Bonds which will be redeemed in accordance with the mandatory sinking fund redemption provisions of the Bonds on the next interest payment date scheduled for such redemption.

Section 19. There shall be a statutory mortgage lien upon the water facilities which are part of the System (including all extensions, improvements and betterments now or hereafter existing) which shall exist in favor of the owners of the Bonds, and each of them and such water facilities shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of the Bonds, provided, however, that such statutory mortgage lien shall be

interpreted according to the decision of the Supreme Court of the State of Arkansas in City of Harrison v. Braswell, *supra*.

Section 20. If there be any default in the payment of the principal of or interest on any of the Bonds, if the City declares bankruptcy, or if the City defaults in any Bond Fund requirements or in the performance of any of the other covenants contained and set forth in this Ordinance, the Trustee may, and upon the written request of the registered owners of not less than 10% in principal amount of the Bonds shall, by proper suit compel, by mandamus or otherwise, the performance of the duties of the officials of the City under the laws of Arkansas. And, in the case of a default in the payment of the principal of and interest on any of the Bonds, the Trustee may, and upon the written request of the registered owners of not less than 10% in principal amount of the Bonds shall, apply in a proper action to a court of competent jurisdiction for the appointment of a receiver to administer the System on behalf of the City and the registered owners with power to charge and collect (or by mandatory injunction or otherwise to cause to be charged and collected) rates sufficient to provide for the payment of the expenses of operation, maintenance and repair and to pay any Bonds and interest outstanding and to apply the revenue in conformity with the laws of Arkansas and with this Ordinance. When all defaults in principal and interest payments have been cured, the custody and operation of the System shall revert to the City.

(b) No owner of any of the outstanding Bonds shall have any right to institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Ordinance or under the laws of Arkansas unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the laws of Arkansas, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more owners of the Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of all outstanding Bonds, and that any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) All rights of action under this Ordinance or under any of the Bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the owners of the Bonds, subject to the provisions of this Ordinance.

(d) No remedy herein conferred upon or reserved to the Trustee or to the owners of the Bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by law.

(e) No delay or omission of the Trustee or of any owners of the Bonds 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 Trustee and to the owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(f) The Trustee may, and upon the written request of the owners of not less than 50% in principal amount of the Bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

(g) The cost of any proceedings brought to enforce the Bonds or any provision of this Ordinance, including reasonable attorney's fees, shall be a debt of the City and shall be paid by the City; provided, however, that such proceedings shall have resulted in a successful determination, ruling, order or agreement for the Trustee or the Bondholders.

(h) After payment of reasonable expenses of the Trustee, the funds realized upon default shall be applied to the payment of expenses of the City and arbitrage rebate only after payment of past due and current debt service on the Bonds.

Section 21. (a) This Ordinance shall constitute a binding contract between the City and the owners of the outstanding Bonds. The City will at all times strictly adhere to the terms and provisions hereof and will fully discharge all of its obligations hereunder. No variation or change in the undertaking herein set forth shall be made while any of the Bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(b) The Trustee may consent to any variation or change in this Ordinance to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto or to make any change that the Trustee determines is not to the material prejudice of the owners of the Bonds.

(c) The owners of not less than 75% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (i) an extension of the maturity of the principal of or the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or (iii) the creation of a lien or pledge superior to the lien and pledge created by this Ordinance, or (iv) a privilege or priority of any Bond or Bonds over any

other Bond or Bonds, or (v) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

Section 22. (a) Moneys held for the credit of the Bond Fund (excluding the Debt Service Reserve Account) shall be invested and reinvested pursuant to the direction of the City (or at the discretion of the Trustee in the absence of direction by the City) in (i) direct 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) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America ("Government Securities") or (ii) in demand deposits or certificates of deposit of banks, including the Trustee, which are insured by the FDIC, or, if in excess of insurance coverage, collateralized by Government Securities or other securities authorized by Arkansas law to secure public deposits, held by a third party and in which securities the Trustee has a perfected security interest, or (iii) savings accounts, deposit accounts or money market deposits in banks, including the Trustee, which are fully insured by the FDIC, or (iv) bonds or notes issued by the State or a municipality or county thereof which are rated by Moody's and S&P in one of the highest rating categories assigned by such agencies, or (v) money market funds comprised exclusively of Government Securities and registered under the Investment Company Act of 1940 whose shares are registered under the Securities Act of 1933 and having a rating by S&P of "AAAm-G," "AAAm," or "AAm" (collectively, "Permitted Investments"), 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 date or dates when the moneys will be required for payment of the principal of or interest on the Bonds when due.

(b) Moneys held for the credit of the Debt Service Reserve Account shall be invested and reinvested pursuant to the direction of the City (or at the discretion of the Trustee in the absence of direction by the City) in Permitted Investments, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than seven (7) years after the date of investment or the maturity date of the outstanding Bonds, whichever is earlier.

(c) Moneys held for the credit of the Construction Fund (hereinafter identified) shall be invested and reinvested pursuant to the direction of the City (or at the discretion of the Trustee in the absence of direction by the City) in Permitted Investments or other investments permitted by Arkansas 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.

(d) Moneys held for the credit of the Cost of Issuance Fund (hereinafter identified) may be invested and reinvested pursuant to the direction of the City in Permitted Investments or other investments permitted by Arkansas 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.

(e) Obligations so purchased as an investment of moneys in any fund established by this Ordinance 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, except that interest earnings and profits on investments of moneys in the Debt Service Reserve Account which increase the amount thereof above the Required Level shall to the extent of any such excess be transferred from time to time into the Bond Fund.

Section 23. Any Bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such Bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) cash sufficient to make such payment and/or (2) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America ("Investment Securities") (provided that such deposit will not affect the tax exempt status of the interest on any of the Bonds or cause any of the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee pertaining thereto shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of any Bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such Bonds, all such moneys and/or Investment Securities.

When all the Bonds shall have been paid within the meaning of this Ordinance, if the Trustee has been paid its fees and expenses and if any arbitrage rebate due the United States Treasury has been paid or provided for to the satisfaction of the Trustee, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such Bonds to be paid over or delivered to or at the direction of the City. In determining the sufficiency of the deposit of Investment Securities there shall be considered the principal amount of such Investment Securities and interest to be earned thereon until the maturity of such Investment Securities.

Section 24. When the Bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee. The Trustee shall authenticate the Bonds and deliver them to or at the direction of the Underwriters upon payment of the Purchase Price. The Trustee shall disburse the Purchase Price received by it as set forth in detail in a letter of delivery instructions signed by the Mayor and delivered to the Trustee (the "Delivery Instructions"), as follows:

(a) The Trustee shall pay to the City the amount of the accrued interest for deposit into the Bond Fund.

(b) The amount necessary to pay the costs of issuance of the Bonds shall be deposited into a special account in the name of the City designated "Cost of Issuance Fund, Series 2015" (the "Cost of Issuance Fund") in the Trustee. Moneys in the Cost of Issuance Fund shall be used to pay costs of issuance as directed in the Delivery Instructions or in requisitions. Requisitions 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 requisition must be signed by the City Administrator or Deputy City Administrator and the City Treasurer. Any amount remaining in the Cost of Issuance Fund on March 1, 2016 shall be transferred by the Trustee to the Construction Fund (identified below).

(c) The amount of the Purchase Price necessary to fund the Debt Service Reserve Account at the Required Level shall be deposited into the Debt Service Reserve Account in the Bond Fund.

(d) The amount of the Purchase Price necessary to accomplish the refunding of the Refunded Bonds shall be deposited with the trustee of the Refunded Bonds.

(e) The Trustee shall deposit the balance in a special fund in the name of the City hereby created and designated "Water and Sewer Bond Construction Fund, Series 2015" (the "Construction Fund") established with the Trustee. The moneys in the Construction Fund shall be disbursed in payment of costs of accomplishing the Improvements, paying necessary expenses incidental thereto and paying expenses of issuing the Bonds and refunding the Refunded Bonds. Disbursements shall be on the basis of requisitions 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 requisition must be signed by the City Administrator or Deputy City Administrator and the City Treasurer. The Trustee shall issue its check upon the Construction Fund payable to the person, firm or corporation designated in the requisition. The Trustee shall keep accurate records as to all payments made on the basis of requisitions.

If moneys remain in the Construction Fund after the Improvements are completed and after all required expenses have been paid and expenditures made from the Construction Fund for and in connection with the accomplishment of the Improvements and the financing thereof, the Mayor shall file a certificate to such effect with the Trustee and the Trustee shall transfer any remaining balance to the Bond Fund.

Section 25. All moneys in the Senior Bond Fund that are allocated to the Refunded Bonds are hereby appropriated and shall be used as set forth in the Delivery Instructions for one or both of the following purposes: to accomplish the refunding of the Refunded Bonds and to pay a portion of the interest on the Bonds due April 1, 2016 by depositing such amount in the Bond Fund.

Section 26. The Trustee shall only be responsible for the exercise of good faith and reasonable prudence in the execution of its trust. The recitals in this Ordinance and in the face of the Bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the owners of

not less than 10% in principal amount of the Bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by 30 days' notice in writing to the City Clerk and the owners of the Bonds then outstanding. At any time, with or without cause, the City or a majority in principal amount of the Bonds may remove the Trustee. In the event of a vacancy in the office of Trustee, either by resignation or by removal, the City shall appoint a new Trustee, such appointment to be evidenced by a written instrument or instruments filed with the City Clerk. Every successor Trustee appointed pursuant to this Section shall be a trust company or bank in good standing, duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$75,000,000. The original Trustee and any successor Trustee shall execute a written acceptance of the trust imposed upon it or them by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the Bonds agree. Such written acceptance shall be filed with the City Clerk and a copy thereof shall be placed in the bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee. No resignation or removal of the Trustee shall become effective until a successor has been appointed and has accepted the duties of Trustee hereunder.

Section 27. (a) The City covenants that it 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 Bonds to be subject to federal income taxation. Without limiting the generality of the foregoing, the City represents and covenants that the proceeds of the Bonds and System 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 shall assure that (i) not in excess of 10% of the Net Proceeds of the Bonds is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed moneys used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for a Private Business Use, the excess over such 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Improvements.

The City shall assure that not in excess of 5% of the Net Proceeds of the Bonds are used, directly or indirectly, to make or finance a loan to persons other than state or local governmental units.

As used in this subsection (b), the following terms shall have the following meanings:

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, less any amount deposited into the Debt Service Reserve Account which is derived from the sale proceeds of the Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

(c) 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.

(d) 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, the statement required by Section 149(e) of the Code.

(e) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Water and Sewer Fund that remain after all required deposits have been made into the Operation and Maintenance Fund and 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 Nonpurpose Investments (as therein defined) attributable to the Bonds, other than investments attributable to such excess over (B) the amount which would have been earned if such Nonpurpose Investments attributable to the Bonds were invested at a rate equal to the Yield (as defined in the Code) applicable to the particular series or issuance of 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 (e). 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 Bonds for federal income tax purposes. As used herein, the term "Bond Counsel" means any lawyer or firm of lawyers of national reputation with respect to the exemption from income tax for interest on state and local debt obligations.

(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 (the "Regulation"). This Ordinance shall constitute an "official intent" for the purpose of the Regulation.

Section 28. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Trustee and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee and the registered owners of the Bonds.

Section 29. 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 Administrator 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.

Section 30. 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 31. 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 the Ordinance.

Section 32. All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 33. It is hereby ascertained and declared that the Improvements are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The Improvements 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: November 17, 2015.

ATTEST:



City Clerk

APPROVED:



Mayor



CERTIFICATE

The undersigned, City Clerk of the City of Fort Smith, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 79-15, adopted at a regular session of the Board of Directors of the City, held at the regular meeting place of the Board of Directors in the City at 6:00 p.m., on the 17th day of November, 2015, and that said Ordinance is of record in Ordinance Record Book No. , Page , now in my possession.

GIVEN under my hand and seal this 18th day of November, 2015.

Sherril Gard

City Clerk

