

Permanent Record
Filed in Clerk's Office

ORDINANCE NO. 023140

OF

CITY OF COLUMBIA, MISSOURI

PASSED APRIL 3, 2017

NOT TO EXCEED
\$6,500,000
SPECIAL OBLIGATION IMPROVEMENT BONDS
(SOLID WASTE SYSTEM PROJECT)
SERIES 2017

ORDINANCE

INDEX

Page

Title..... 1
Recitals..... 1

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms..... 2

ARTICLE II

AUTHORIZATION OF THE BONDS

Section 201. Authorization of Bonds..... 6
Section 202. Description of Bonds 6
Section 203. Designation of Paying Agent..... 6
Section 204. Method and Place of Payment of Bonds..... 7
Section 205. Registration, Transfer and Exchange of Bonds 8
Section 206. Execution, Authentication and Delivery of Bonds 9
Section 207. Mutilated, Destroyed, Lost and Stolen Bonds 9
Section 208. Cancellation and Destruction of Bonds Upon Payment..... 9
Section 209. Preliminary and Final Official Statement 10
Section 210. Book-Entry Bonds; Securities Depository..... 10

ARTICLE III

REDEMPTION OF BONDS

Section 301. Optional and Mandatory Redemption of Bonds 11
Section 302. Selection of Bonds to Be Redeemed..... 12
Section 303. Notice and Effect of Call for Redemption 12

ARTICLE IV

SECURITY FOR AND PAYMENT OF BONDS

Section 401. Security for the Bonds 14
Section 402. Covenant to Request Appropriations 14

ARTICLE V

ESTABLISHMENT OF FUNDS; DEPOSIT AND APPLICATION OF BOND PROCEEDS

Section 501. Establishment of Funds..... 14
Section 502. Deposit of Bond Proceeds..... 14
Section 503. Application of Moneys in the Project Fund..... 15

Section 504.	Application of Moneys in the Special Obligation Debt Service Fund.....	15
Section 505.	Application of Moneys in the Rebate Fund	15
Section 506.	Deposits and Investment of Moneys.....	16
Section 507.	Nonpresentment of Bonds.....	16
Section 508.	Payments Due on Saturdays, Sundays and Holidays.....	16

ARTICLE VI

DEFAULT AND REMEDIES

Section 601.	Default and Remedies	17
Section 602.	Limitation on Rights of Bondowners.....	17
Section 603.	Remedies Cumulative	18
Section 604.	No Acceleration	18
Section 605.	No Obligation to Levy Taxes.....	18
Section 606.	Exception for Continuing Disclosure.....	18

ARTICLE VII

DEFEASANCE

Section 701.	Defeasance	18
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ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 801.	Tax Covenants	19
Section 802.	Continuing Disclosure	19
Section 803.	Amendments	20
Section 804.	Notices, Consents and Other Instruments by Bondowners.....	21
Section 805.	Corporate Existence.....	21
Section 806.	Insurance.....	21
Section 807.	Further Authority	22
Section 808.	Annual Audit.....	22
Section 809.	Severability	22
Section 810.	Governing Law	22
Section 811.	Electronic Storage of Documents	22
Section 812.	Effective Date	22

Exhibit A – Form of Bonds

Exhibit B – Form of Continuing Disclosure Undertaking

Exhibit C – Form of Certificate of Final Terms

Exhibit D – Form of Notice of Bond Sale

023140

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Introduced by Treece
 First Reading 3-20-17 Second Reading 4-3-17
 Ordinance No. 023140 Council Bill No. B 85-17 A

AN ORDINANCE

authorizing the issuance of Special Obligation Improvement Bonds (Solid Waste System Project), Series 2017, in the aggregate principal amount of not to exceed \$6,500,000, prescribing the form and details of said bonds and the covenants and agreements to provide for the payment and security thereof; and authorizing certain actions and documents and prescribing other matters relating thereto; and fixing the time when this ordinance shall become effective.

WHEREAS, the City of Columbia, Missouri (the "City"), is a constitutional charter city and political subdivision duly organized and existing under the constitution and laws of the State of Missouri; and

WHEREAS, the City is authorized under the provisions of the Constitution of Missouri and its Charter to issue and sell special obligation bonds for the purpose of providing funds to finance and refinance the costs of certain capital improvements and to provide that the principal of and interest on such special obligations bonds shall be payable solely from the revenues derived from annual appropriations by the City Council; and

WHEREAS, the City now desires to finance the costs of improvements to the City's solid waste system (the "Project") with proceeds received from the sale of an issue of special obligation bonds; and

WHEREAS, plans and specifications for the Project and an estimate of the cost thereof have been prepared and made by a Consultant (as hereinafter defined) to the City and the same are hereby accepted and approved and are on file in the office of the City Clerk; and

WHEREAS, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants that special obligation bonds be issued and secured in the form and manner as hereinafter provided to provide funds for the Project;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein, the following words and terms as used in this Ordinance shall have the following meanings:

“Accountant” means an independent certified public accountant or firm of certified public accountants.

“Bond Counsel” means Gilmore & Bell, P.C., Kansas City, Missouri, or any other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the City.

“Bond Payment Date” means any date on which principal of or interest on any Bond is payable.

“Bond Register” means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

“Bondowner,” “Owner” or “Registered Owner” when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

“Bonds” means the Special Obligation Improvement Bonds (Solid Waste System Project), Series 2017, of the City, authorized and issued by the City pursuant to this Ordinance.

“Business Day” means a day, other than a Saturday, Sunday or holiday, on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its banking operations.

“Cede & Co.” means Cede & Co., as nominee name of The Depository Trust Company, New York, New York or any successor nominee of the Securities Depository with respect to the Bonds.

“Certificate of Final Terms” means the Certificate of Final Terms, the form of which is attached to this Ordinance as **Exhibit C**.

“City” means City of Columbia, Missouri, and any successors or assigns.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“Consultant” means the Consulting Engineer, an Accountant or a registered municipal advisor.

“Continuing Disclosure Instructions” means the Continuing Disclosure Undertaking dated the date set forth therein, the form of which is attached to this Ordinance as **Exhibit B**.

“Defaulted Interest” means interest on any Bond which is payable but not paid on any Interest Payment Date.

“Defeasance Obligations” means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) such obligations are rated in a rating category by Moody’s or Standard & Poor’s that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

“Federal Tax Certificate” means the Federal Tax Certificate dated the date set forth therein, delivered by the City for the Bonds, which sets forth certain facts, covenants, representations, and expectations relating to the use of Bond proceeds and the use of property financed or refinanced with those proceeds, and the investment of the Bond proceeds and certain other related money in order to comply with the requirements of Code imposed on the Bonds.

“Fiscal Year” means the fiscal year of the City, currently October 1 to September 30.

“Interest Payment Date” means the Stated Maturity of an installment of interest on any Bond.

“Maturity” when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or by call for redemption or otherwise.

“Ordinance” means this Ordinance adopted by the governing body of the City, authorizing the issuance of the Bonds, as amended from time to time.

“Original Principal Amount” means the Original Principal Amount of the Bonds specified in the Certificate of Final Terms.

“Outstanding” means, when used with reference to Bonds, as of any particular date of determination, all Bonds theretofore authenticated and delivered hereunder, except the following Bonds:

(a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 701** hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered hereunder.

“Participants” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“Paying Agent” means UMB Bank, N.A., St. Louis, Missouri, and any successors and assigns.

“Permitted Investments” means any of the following securities, if and to the extent the same are at the time legal for investment of the City’s funds:

(a) United States Government Obligations;

(b) certificates of deposit or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit or time deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by United States Government Obligations which shall have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time deposits; and

(c) any other securities or investments that are lawful for the investment of moneys held in such funds or accounts under the laws of the State of Missouri.

“Person” means any natural person, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

“Project” means the improvements to the City’s solid waste system to be financed with proceeds of the Bonds.

“Project Fund” means the fund by that name created by **Section 501** hereof.

“Purchase Price” means the purchase price of the Bonds specified in the Certificate of Final Terms.

“Purchaser” means the purchaser of the Bonds specified in the Certificate of Final Terms.

“Rebate Fund” means the fund by that name referred to in **Section 501** hereof.

“Record Date” for the interest payable on any Interest Payment Date means the 15th day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

“Redemption Date” when used with respect to any Bond to be redeemed means the date fixed for the redemption of such Bond pursuant to the terms of this Ordinance.

“Redemption Price” when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of this Ordinance, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

“Replacement Bonds” means Bonds issued to the beneficial owners of the Bonds in accordance with **Section 210(b)** hereof.

“Securities Depository” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

“Special Obligation Debt Service Fund” means the fund by that name referred to in **Section 501** hereof.

“Special Record Date” means the date fixed by the Paying Agent pursuant to **Section 204** hereof for the payment of Defaulted Interest.

“Stated Maturity” when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond and this Ordinance as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“United States Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States of America (including the interest component of obligations of the Resolution Funding Corporation).

ARTICLE II

AUTHORIZATION OF THE BONDS

Section 201. Authorization of Bonds. There is hereby authorized and directed to be issued a series of bonds of the City, designated "Special Obligation Improvement Bonds (Solid Waste System Project), Series 2017," in the Original Principal Amount specified in the Certificate of Final Terms (the "Bonds"), for the purpose of providing funds to (1) pay the costs of the Project and (2) pay certain costs related to the issuance of the Bonds.

Section 202. Description of Bonds. The Bonds shall be sold at public sale to the bidder whose bid is in compliance with the Notice of Bond Sale circulated for the sale of the Bonds, is not otherwise rejected by the City in accordance with the provisions of the Notice of Bond Sale, and will result in the lowest "true interest cost," determined as follows: the true interest cost is the discount rate (expressed as a per-annum percentage rate) which, when used in computing the present value of all payments of principal and interest to be paid on the Bonds, from the scheduled payment dates back to the dated date of the Bonds, produces an amount equal to the price bid, including net premium or original issue discount, if any, but excluding any interest accrued to the date of delivery.

The Bonds shall be sold to the Purchaser at the purchase price set forth in the winning bid, as such purchase price may be adjusted in connection with issue sizing adjustments made in accordance with the terms of the Notice of Bond Sale. The Mayor is authorized to accept the Purchaser's winning bid and to execute a Certificate of Final Terms for and on behalf of and as the act and deed of the City, such officer's signature thereon being conclusive evidence of such official's and the City's approval thereof. Delivery of the Bonds shall be made to the Purchaser as soon as practicable after the adoption of this Ordinance and the acceptance of the Purchaser's bid, upon payment therefor in accordance with the terms of sale.

The Bonds shall consist of fully registered bonds without coupons, numbered from 1 upward, in denominations of \$5,000 or any integral multiple thereof. The Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be substantially in the form set forth in **Exhibit A** attached hereto and shall be subject to registration, transfer and exchange as provided in **Section 205** hereof. The Bonds shall become due in the amounts on the Stated Maturities of February 1 in the years, shall bear interest at the rates per annum, and shall be issued with such terms and provisions specified in the Certificate of Final Terms. The Certificate of Final Terms shall be completed and shall be executed by the Mayor, and the signature of the Mayor on said Certificate of Final Terms, attested by the City Clerk, shall constitute conclusive evidence of the approval of both the Mayor and the Council of the City.

The Bonds shall bear interest at the rates specified in **Exhibit C** (computed on the basis of a 360-day year of twelve 30-day months) from the date thereof or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable semiannually on February 1 and August 1 in each year, beginning on August 1, 2017.

Section 203. Designation of Paying Agent. UMB Bank, N.A., St. Louis, Missouri, is hereby designated as the City's Paying Agent for the payment of principal of and interest on the Bonds and as bond registrar with respect to the registration, transfer and exchange of Bonds (herein called the "Paying Agent").

The City will at all times maintain a Paying Agent meeting the qualifications herein described for the performance of the duties hereunder. The City reserves the right to appoint a successor Paying Agent

by (1) filing with the Paying Agent then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent and appointing a successor, and (2) causing notice of the appointment of the successor Paying Agent to be given by first class mail to each Bondowner. The Paying Agent may resign upon giving written notice by first class mail to the City and the Bondowners not less than 60 days prior to the date such resignation is to take effect. No resignation or removal of the Paying Agent shall become effective until a successor has been appointed and has accepted the duties of the Paying Agent.

Every Paying Agent appointed hereunder shall at all times be a commercial banking association or corporation or trust company located in the State of Missouri organized and in good standing and doing business under the laws of the United States of America or of the State of Missouri and subject to supervision or examination by federal or state regulatory authority.

The Paying Agent shall be paid its fees and expenses for its services in connection herewith, which fees and expenses shall be paid as other Expenses are paid.

Section 204. Method and Place of Payment of Bonds. The principal or Redemption Price of and interest on the Bonds shall be payable in any coin or currency of the United States of America that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity by check or draft to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the principal corporate trust office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest by check or draft mailed by the Paying Agent to such Registered Owner at the address shown on the Bond Register or, in the case of an interest payment to any Registered Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Registered Owner upon written notice signed by such Registered Owner and given to the Paying Agent not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), address, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Registered Owner of such Bond on the relevant Record Date and shall be payable to the Registered Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The City shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the City of such Special Record Date and, in the name and at the expense of the City, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first class mail, postage prepaid, to each Registered Owner of a Bond entitled to such notice at the address of such Registered Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and shall upon the written request of the City at least annually forward a copy or summary of such records to the City.

Section 205. Registration, Transfer and Exchange of Bonds. The City covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Paying Agent for the registration, transfer and exchange of Bonds as herein provided. Each Bond when issued shall be registered in the name of the owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal payment office of the Paying Agent, the Paying Agent shall transfer or exchange such Bond for a new Bond or Bonds in any authorized denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange. Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The City shall pay the fees and expenses of the Paying Agent for the registration, transfer and exchange of Bonds provided for by this Ordinance and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Paying Agent, are the responsibility of the Registered Owners of the Bonds. In the event any Registered Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Registered Owner hereunder or under the Bonds.

The City and the Paying Agent shall not be required (a) to register the transfer or exchange of any Bond after notice calling such Bond or portion thereof for redemption has been given or during the period of fifteen days next preceding the first mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the City of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to **Section 204** hereof.

The City and the Paying Agent may deem and treat the Person in whose name any Bond is registered in the Bond Register as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Registered Owner or upon the Registered Owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Paying Agent, the Bond Register may be inspected and copied by the Registered Owners of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Registered Owners whose authority is evidenced to the satisfaction of the Paying Agent.

Section 206. Execution, Authentication and Delivery of Bonds. The Bonds, including any Bonds issued in exchange or as substitution for the Bonds initially delivered, shall be signed by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk, and shall have the official seal of the City affixed thereto or imprinted thereon. In case any officer whose signature appears on any Bond ceases to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and City Clerk are hereby authorized and directed to prepare and execute the Bonds as herein specified, and when duly executed, to deliver the Bonds to the Paying Agent for authentication.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form set forth in **Exhibit A** attached hereto, which shall be manually executed by an authorized signatory of the Paying Agent, but it shall not be necessary that the same signatory sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Ordinance or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Paying Agent. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. Upon authentication, the Paying Agent shall deliver the Bonds to or upon the order of the Purchaser of the Bonds upon payment of the Purchase Price to the City.

Section 207. Mutilated, Destroyed, Lost and Stolen Bonds. If (a) any mutilated Bond is surrendered to the Paying Agent or the Paying Agent receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the City and the Paying Agent such security or indemnity as may be required by the Paying Agent, then, in the absence of notice to the City and the Paying Agent that such Bond has been acquired by a bona fide purchaser, the City shall execute and the Paying Agent shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Paying Agent, in its discretion may pay such Bond instead of delivering a new Bond.

Upon the issuance of any new Bond under this Section, the City or the Paying Agent may require the payment by the Registered Owner 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 Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds.

Section 208. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and shall file an executed counterpart of such certificate with the City.

Section 209. Preliminary and Final Official Statement. A Preliminary Official Statement is hereby authorized and approved in a form reviewed and approved by the City's Finance Director and Bond Counsel, and the final Official Statement is hereby authorized and approved by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor of the City is hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the City hereby deems the information regarding the City contained in the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), and the appropriate officers of the City are hereby authorized, if requested, to provide the Purchaser a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of such Rule.

The City agrees to provide to the Purchaser within seven business days of the date of the sale of the Bonds sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 210. Book-Entry Bonds; Securities Depository.

(a) The Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no beneficial owner will receive certificates representing their respective interests in the Bonds, except in the event the Paying Agent issues Replacement Bonds as provided in subsection (b) hereof. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Paying Agent authenticates and delivers Replacement Bonds to the beneficial owners as described in subsection (b).

(b) (1) If the City determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (C) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, or (2) if the Paying Agent receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, then the Paying Agent shall notify the Owners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Paying Agent shall register in the name of and authenticate and deliver Replacement Bonds to the beneficial owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (1)(A) or (1)(B) of this subsection (b), the City, with the consent of the Paying Agent, may select a successor securities depository in accordance with **Section 210(c)** hereof to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to

the period of time when at least one Bond is registered in the name of the Securities Depository or its nominee. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Paying Agent, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the City, the Paying Agent or Owners are unable to locate a qualified successor of the Securities Depository in accordance with **Section 210(c)** hereof, then the Paying Agent shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Paying Agent may rely on information from the Securities Depository and its Participants as to the names and addresses of and principal amounts held by the beneficial owners of the Bonds. The cost of printing, registration, authentication and delivery of Replacement Bonds shall be paid for by the City.

(c) In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the City may appoint a successor Securities Depository provided the Paying Agent and the City receive written evidence with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Paying Agent upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Optional and Mandatory Redemption of Bonds.

(a) *Optional Redemption.* At the option of the City, certain Bonds specified in the Certificate of Final Terms or portions thereof may be called for redemption and payment prior to their Stated Maturity in whole or in part on the dates and at the redemption prices specified in the Certificate of Final Terms.

(b) *Mandatory Redemption of Bonds.* The Term Bonds, if any, specified in the Certificate of Final Terms will be subject to mandatory redemption and payment prior to Stated Maturity in part on the dates and in the principal amounts specified in the Certificate of Final Terms, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date.

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the City may: (1) deliver to the Paying Agent for cancellation Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Bonds subject to mandatory redemption on said mandatory Redemption Date from any Registered Owner thereof, whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the City under this Section for any Bonds subject to mandatory redemption on said mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection (b)) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection (b). Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount

thereof on the obligation of the City to redeem Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Bonds of the same Stated Maturity in chronological order, and the principal amount of Bonds of the same Stated Maturity to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the City intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the City will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with respect to such mandatory redemption payment.

Section 302. Selection of Bonds to Be Redeemed.

(a) The Paying Agent shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Paying Agent at least 45 days prior to the Redemption Date of written instructions from the City specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. If any Bonds are refunded more than 90 days in advance of such Redemption Date, any escrow agreement entered into by the City in connection with such refunding shall provide that such written instructions to the Paying Agent shall be given by the escrow agent on behalf of the City not less than 45 days prior to the Redemption Date. The Paying Agent may in its discretion waive such notice period so long as the notice requirements set forth in **Section 303** are met. The foregoing provisions of this paragraph shall not apply to the mandatory redemption of Bonds hereunder, and Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption requirements without the necessity of any action by the City and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.

(b) Bonds shall be redeemed only in the principal amount of \$5,000 or any integral multiple thereof. Bonds of less than a full Stated Maturity shall be selected by the Paying Agent in \$5,000 units of principal amount in such equitable manner as the Paying Agent may determine.

(c) In the case of a partial redemption of Bonds at the time Outstanding in denominations greater than \$5,000, then for all purposes in connection with such redemption each \$5,000 of face value shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of face value represented by any Bond are selected for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the Registered Owner of such Bond or the Registered Owner's duly authorized agent shall present and surrender such Bond to the Paying Agent (1) for payment of the Redemption Price and interest to the Redemption Date of such \$5,000 unit or units of face value called for redemption, and (2) for exchange, without charge to the Registered Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Registered Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the \$5,000 unit or units of face value called for redemption (and to that extent only).

Section 303. Notice and Effect of Call for Redemption. Unless waived by any Registered Owner of Bonds to be redeemed, official notice of any redemption shall be given by the Paying Agent on behalf of the City by mailing a copy of an official redemption notice by first class mail at least 30 days prior to the Redemption Date to the Purchaser of the Bonds and each Registered Owner of the Bonds to be redeemed at the address shown on the Bond Register.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) if less than all Outstanding Bonds of a maturity are to be redeemed, the identification number, Stated Maturity, and, in the case of partial redemption of any Bonds, the respective principal amounts of the Bonds to be redeemed;
- (d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and
- (e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal corporate office of the Paying Agent.

The failure of any Registered Owner to receive notice given as heretofore provided or any defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the City shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date at the Redemption Price therein specified, and from and after the Redemption Date (unless the City defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been redeemed shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

The Paying Agent is also directed to comply with any mandatory standards established by the Securities and Exchange Commission and then in effect for processing redemptions of municipal securities. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

For so long as the Securities Depository is effecting book-entry transfers of the Bonds, the Paying Agent shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond (having been mailed notice from the Paying Agent, the Securities Depository, a Participant or otherwise) to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

ARTICLE IV

SECURITY FOR AND PAYMENT OF BONDS

Section 401. Security for the Bonds. The Bonds shall be special obligations of the City payable as to both principal and interest solely from annual appropriations of funds by the City for such purpose to be deposited in the Special Obligation Debt Service Fund. The obligation of the City to make payments into the Special Obligation Debt Service Fund and for any other obligations of the City under this Ordinance do not constitute a general obligation or indebtedness of the City for which the City is obligated to levy or pledge any form of taxation, or for which the City has levied or pledged any form of taxation and shall not be construed to be a debt of the City in contravention of any applicable constitutional, statutory or charter limitation or requirement but in each Fiscal Year shall be payable solely from the amounts pledged or appropriated therefor (i) out of the income and revenues provided for such year, plus (ii) any unencumbered balances for previous years. Subject to the preceding sentence, the obligations of the City to make payments hereunder and to perform and observe any other covenant and agreement contained herein shall be absolute and unconditional.

The covenants and agreements of the City contained herein and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds to the payment of the principal of and the interest on the Bonds, or otherwise, except as to the rate of interest and Stated Maturity as provided in this Ordinance.

Section 402. Covenant to Request Appropriations. The City Council hereby directs that from and after delivery of the Bonds and so long as any of the Bonds remain Outstanding, subject to **Section 401** hereof, the Mayor, the Finance Director or any other officer of the City at any time charged with the responsibility of formulating budget proposals to include in each annual budget an appropriation of the amount necessary (after taking into account any moneys legally available for such purpose) to pay debt service on the Bonds and to make other payments required pursuant to this Ordinance. The City is not required or obligated to make any such annual appropriation, and the decision whether or not to appropriate such funds will be solely within the discretion of the then current City Council.

ARTICLE V

ESTABLISHMENT OF FUNDS; DEPOSIT AND APPLICATION OF BOND PROCEEDS

Section 501. Establishment of Funds. There have been or shall be established in the treasury of the City and shall be held and administered by the Finance Director of the City (a) a Project Fund, (b) a Special Obligation Debt Service Fund and (c) a Rebate Fund. Each fund shall be maintained as a separate and distinct fund and the moneys therein shall be held, managed, invested, disbursed and administered as provided in this Ordinance. All moneys deposited in the funds shall be used solely for the purposes set forth in this Ordinance. The City shall keep and maintain adequate records pertaining to each fund and all disbursements therefrom.

Section 502. Deposit of Bond Proceeds. The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds as follows:

(a) Any accrued interest received from the sale of the Bonds shall be deposited in the Special Obligation Debt Service Fund and applied in accordance with **Section 504** hereof; and

(b) The remaining balance of the proceeds of the Bonds specified in the Certificate of Final Terms shall be deposited in the Project Fund and shall be applied in accordance with **Section 503** hereof.

Section 503. Application of Moneys in the Project Fund. Moneys in the Project Fund shall be used by the City solely for the purpose of (a) paying the cost of the Project as hereinbefore provided, in accordance with the plans and specifications therefor prepared by the City's Consultant for the Project, if any, as heretofore approved by the Council of the City and on file in the office of the City Clerk, including any alterations in or amendments to said plans and specifications deemed advisable by the Consultant, if any, and approved by the Council of the City, and (b) paying the costs and expenses incident to the issuance of the Bonds, including, but not limited to, the fees of attorneys, financial consultants, accountants, rating agencies, printers and others employed to render professional services and other costs, fees and expenses incurred in connection with the issuance of the Bonds.

Upon completion of the Project as hereinbefore provided, any surplus money remaining in the Project Fund and not required for the payment of unpaid costs thereof shall be deposited into the Special Obligation Debt Service Fund for the Bonds and applied in accordance with **Section 504** hereof.

Section 504. Application of Moneys in the Special Obligation Debt Service Fund. All amounts paid and credited to the Special Obligation Debt Service Fund shall be expended and used by the City for the purpose of paying the Bonds as and when the same become due and the usual and customary fees and expenses of the Paying Agent. The Finance Director is authorized and directed to withdraw from the Special Obligation Debt Service Fund sums sufficient to pay the Bonds and the fees and expenses of the Paying Agent as and when the same become due, and to forward such sums to the Paying Agent in a manner which ensures that the Paying Agent will receive immediately available funds in such amounts on or before the Business Day immediately preceding the dates when such principal, interest and fees of the Paying Agent will become due. If, through the lapse of time or otherwise, the Registered Owners of Bonds are no longer entitled to enforce payment of the Bonds or the interest thereon, the Paying Agent shall return said funds to the City. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance and shall be held in trust by the Paying Agent for the benefit of the Registered Owners of the Bonds entitled to payment from such moneys.

Any moneys or investments remaining in the Special Obligation Debt Service Fund after the retirement of the indebtedness for which the Bonds were issued and all other indebtedness of the City shall be transferred and paid into the appropriate fund(s) of the City as required by law.

Section 505. Application of Moneys in the Rebate Fund.

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money in the Rebate Fund shall be held in trust, to the extent required to satisfy the Rebate Amount (as determined pursuant to the Federal Tax Certificate), for payment to the United States of America, and neither the City nor the Registered Owner of any Bond shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and the Federal Tax Certificate.

(b) The City shall periodically determine the rebatable arbitrage under Section 148(f) of the Code in accordance with the Federal Tax Certificate, and the City shall make payments to the United States Government at the times and in the amounts determined under the Federal Tax Certificate. Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and the interest thereon and payment and satisfaction of any rebate amount, or provision made therefor, shall be released to the City.

(c) Notwithstanding any other provision of this Ordinance, including in particular **Article VII** hereof, the obligation to pay rebatable arbitrage to the United States and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Bonds.

Section 506. Deposits and Investment of Moneys.

(a) Moneys in each of the funds and accounts created by and referred to in this Ordinance shall be deposited in a bank or banks or other legally permitted financial institutions located in the State of Missouri that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the banks or financial institutions holding such deposits as provided by the laws of the State of Missouri.

(b) Moneys held in any fund or account held in the custody of the City referred to in this Ordinance may be invested in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the moneys invested may be needed for the purpose for which such fund or account was created. All earnings on any investments held in any fund or account shall accrue to and become a part of such fund or account. In determining the amount held in any fund or account under any of the provisions of this Ordinance, obligations shall be valued at the lower of the cost or the market value thereof.

Section 507. Nonpresentment of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond shall have been made available to the Paying Agent all liability of the City to the Registered Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Registered Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Ordinance or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due at Maturity, the Paying Agent shall repay to the City without liability for interest thereon the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the City, and the Registered Owner thereof shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the City shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 508. Payments Due on Saturdays, Sundays and Holidays. In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

ARTICLE VI

DEFAULT AND REMEDIES

Section 601. Default and Remedies. The City covenants and agrees that if it defaults in the payment of the principal of or interest on any of the Bonds as the same become due on any Bond Payment Date, or if the City or its governing body or any of the officers, agents or employees thereof fail or refuse to comply with any of the provisions of this Ordinance or of the constitution or statutes of the State of Missouri, and such default continues for a period of 30 days after written notice specifying such default has been given to the City by any Registered Owner of any Bond then Outstanding, or if the City declares bankruptcy, then, at any time thereafter and while such default continues, the Registered Owners of 25% in principal amount of the Bonds then Outstanding may, by written notice to the City filed in the office of the City Clerk or delivered in person to said City Clerk, exercise any of the remedies specified below. This provision, however, is subject to the condition that if all arrears of interest upon all of said Bonds, except interest accrued but not yet due on such Bonds, and all arrears of principal upon all of said Bonds has been paid in full and all other defaults, if any, by the City under the provisions of this Ordinance and under the provisions of the statutes of the State of Missouri have been cured, then and in every such case the Registered Owners of a majority in principal amount of the Bonds then Outstanding, by written notice to the City given as hereinbefore specified, may rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any rights consequent thereon.

The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract among the City and the Registered Owners of the Bonds, and the Registered Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Registered Owners of Bonds similarly situated:

- (a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Registered Owner or Owners against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the constitution and laws of the State of Missouri;
- (b) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and
- (c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of the Bonds.

Section 602. Limitation on Rights of Bondowners. The covenants and agreements of the City contained herein and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Bonds. All of the Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, or date of Maturity or right of prior redemption as provided in this Ordinance. No one or more Bondowners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Registered Owners of such Outstanding Bonds.

Section 603. Remedies Cumulative. No remedy conferred herein upon the Bondowners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any Bondowner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Bonds by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceedings taken by any Bondowner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such Bondowner, then, and in every such case, the City and the Registered Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Bondowners shall continue as if no such suit, action or other proceedings had been brought or taken.

Section 604. No Acceleration. Notwithstanding anything herein to the contrary, the Bonds are not subject to acceleration upon the occurrence of an event of default hereunder.

Section 605. No Obligation to Levy Taxes. Nothing contained in this Ordinance shall be construed as imposing on the City any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Bonds.

Section 606. Exception for Continuing Disclosure. This **Article VI** shall not apply to **Section 802** of this Ordinance regarding continuing disclosure requirements, and Bondowners or Beneficial Owners of Bonds (as defined in the Continuing Disclosure Undertaking) shall have no remedies for enforcement of said **Section 802** other than the remedies provided in said **Section 802**.

ARTICLE VII

DEFEASANCE

Section 701. Defeasance. When any or all of the Bonds or the interest payments thereon shall have been paid and discharged, then the requirements contained in this Ordinance and all other rights granted hereby shall terminate with respect to the Bonds or interest payments so paid and discharged. Bonds or the interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Ordinance if there has been deposited with the Paying Agent or other commercial bank or trust company located in the State of Missouri and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Bonds or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned thereon, will be sufficient for the payment of the principal or Redemption Price of said Bonds, and/or interest to accrue on such Bonds to the Stated Maturity or Redemption Date, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments; provided, however, that if any such Bonds shall be redeemed prior to the Stated Maturity thereof, (1) the City shall have elected to redeem such Bonds, and (2) either notice of such redemption shall have been given, or the City shall have given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Paying Agent to redeem such Bonds in compliance with **Section 303** of this Ordinance. Any moneys and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or the interest payments thereon, shall be and

are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Registered Owners of such Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Defeasance Obligations deposited with the Paying Agent or other bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

In the event of an advance refunding, the City shall cause to be delivered a verification report of an independent recognized public accountant verifying the sufficiency of the amounts on deposit with the Paying Agent or other escrow agent to provide for payment in full of the Bonds as provided herein.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 801. Tax Covenants.

(a) The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from federal gross income of the interest on the Bonds and (2) it will not use or permit the use of any proceeds of Bonds or any other funds of the City, nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from federal gross income of the interest on the Bonds. The City will also pass such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future law in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

(b) The City covenants and agrees that (1) it will use the proceeds of the Bonds as soon as practicable for the purposes for which the Bonds are issued, and (2) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action, that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(c) The City covenants that it will pay or provide for the payment from time to time of all arbitrage rebate to the United States pursuant to Section 148(f) of the Code and the Federal Tax Certificate. This covenant shall survive payment in full or defeasance of the Bonds. The Federal Tax Certificate may be amended or replaced if, in the opinion of Bond Counsel, such amendment or replacement will not adversely affect the exclusion from federal gross income of the interest on the Bonds.

(d) The City covenants that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a "private activity bond" within the meaning of Section 141 of the Code.

(e) The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to **Article VII** of this Ordinance or any other provision of this Ordinance, until the final Maturity of all Bonds Outstanding.

Section 802. Continuing Disclosure. The City hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by Rule 15c2-12 (as defined in the Continuing Disclosure Undertaking) and is further set forth in the Continuing Disclosure

Undertaking attached hereto as **Exhibit B**. Such covenant shall be for the benefit of and enforceable by the Purchaser and such Beneficial Owners.

In the event the City fails to comply in a timely manner with its covenants contained in this Section, the Purchaser and/or any such Beneficial Owner may make demand for such compliance by written notice to the City. In the event the City does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any such Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in this Section or for the enforcement of any other appropriate legal or equitable remedy as the Purchaser and/or any such Beneficial Owner shall deem effectual to protect and enforce any of the duties of the City under this Section.

Section 803. Amendments. The Continuing Disclosure Undertaking is exempt from the provisions of this Section and is subject to amendment and modification only as provided therein. The rights and duties of the City and the Bondowners, and the terms and provisions of the Bonds or of this Ordinance, may be amended or modified at any time in any respect by ordinance of the City with the written consent of the Registered Owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Registered Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk, but no such modification or alteration shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the City is required to pay as principal of or interest on any Bond;
- (c) permit preference or priority of any Bond over any other Bond; or
- (d) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Ordinance.

Any provision of the Bonds or of this Ordinance may, however, be amended or modified by ordinance duly adopted by the City Council at any time in any legal respect with the written consent of the Registered Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Bondowners, the City may amend or supplement this Ordinance for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein, or in connection with any other change therein which is not materially adverse to the security of the Bondowners.

Every amendment or modification of the provisions of the Bonds or of this Ordinance to which the written consent of the Bondowners is given, as above provided, shall be expressed in an ordinance passed by the governing body of the City amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the City Clerk a copy of this Ordinance of the City herein provided for, duly certified, as well as proof of any required consent to such modification by the Registered Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification. A certified copy of every such amendatory or supplemental proceedings and a certified copy of this Ordinance shall be made available for inspection by the Registered Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Ordinance, and upon payment of the reasonable cost of preparing the

same, a certified copy of any such amendatory or supplemental proceedings or of this Ordinance will be sent by the City Clerk to any such Bondowner or prospective Bondowner.

The City shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Ordinance made hereunder which affects the duties or obligations of the Paying Agent under this Ordinance.

Section 804. Notices, Consents and Other Instruments by Bondowners. Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, other than the assignment of the ownership of a Bond, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Registered Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Ordinance, Bonds owned by the City shall be disregarded and deemed not to be Outstanding under this Ordinance, except that, in determining whether the Bondowners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Bondowners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Bondowners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the City.

Section 805. Corporate Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain Outstanding, unless another body corporate and politic by operation of law succeeds to the powers, privileges, rights, liabilities, disabilities and duties of the City and is obligated by law to comply with the terms and provisions of this Ordinance without materially adversely affecting at any time the privileges and rights of any Owner of any Outstanding Bond.

Section 806. Insurance. The City will carry and maintain insurance with respect to the Project against casualties, contingencies and risks (including but not limited to property and casualty, fire and extended coverage insurance upon all of the properties forming a part of the Project insofar as the same are of an insurable nature, public liability insurance, business interruption insurance, worker's compensation and employee dishonesty insurance), such insurance to be of the character and coverage and in such amounts as would normally be carried by other municipalities or public entities engaged in similar activities of comparable size and similarly situated. In the event of loss or damage, the City, with reasonable dispatch, will use the proceeds of such insurance in reconstructing and replacing the property damaged or destroyed, or in paying the claims on account of which such proceeds were received, or if such reconstruction or replacement is unnecessary or impracticable, then the City will pay and deposit the proceeds of such insurance into the Special Obligation Debt Service Fund. The City will annually review

the insurance it maintains with respect to the Project to determine that such insurance is customary and adequate to protect its property and operations.

Section 807. Further Authority. The officers of the City, including the Mayor and City Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 808. Annual Audit. Annually, promptly after the end of the Fiscal Year, the City will cause an audit to be made of its funds and accounts for the preceding Fiscal Year by an independent public accountant or firm of independent public accountants.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the City Clerk, and a duplicate copy of the audit shall be mailed to the Purchaser. Such audits shall at all times during the usual business hours be open to the examination and inspection by any Registered Owner of any of the Bonds, or by anyone acting for or on behalf of such Registered Owner.

As soon as possible after the completion of the annual audit, the City Council shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of the Ordinance, the City shall, subject to **Section 401** hereof, promptly cure such deficiency.

A copy of each annual audit will be mailed to the Purchaser and, upon payment of the reasonable cost of preparing and mailing the same, a copy of any annual audit will, upon request, be sent to any Bondowner or prospective Bondowner.

Section 809. Severability. If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 810. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 811. Electronic Storage of Documents. The City agrees that the transaction described herein may be conducted and related documents may be stored by electronic means.

Section 812. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Council.

PASSED this 3rd day of April, 2017.

ATTEST:




City Clerk



Mayor and Presiding Officer

APPROVED AS TO FORM:



City Counselor