

ORDINANCE NO. 2016 - \_\_\_\_

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$10,000,000 CITY OF OZARK, ARKANSAS SALES AND USE TAX BONDS, SERIES 2016 FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COST OF CAPITAL IMPROVEMENTS; PLEDGING COLLECTIONS OF A 1% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; AUTHORIZING THE BOND PURCHASE AGREEMENT AND THE EXECUTION AND USE OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH THE MARKETING OF SUCH BONDS; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE SALE OF THE BONDS; AUTHORIZING AND APPROVING THE EXECUTION AND USE OF AN OFFICIAL STATEMENT, AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ordinance No. 2015-06 adopted June 8, 2015 (the “**Election Ordinance**”), there was submitted to the qualified electors of the City of Ozark, Arkansas (the “**City**”), a city of the first class, the question of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (“**Amendment 62**”) and under each of Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the “**Local Government Bond Act**”) and Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the “**Capital Improvement Bond Act**” and collectively with Amendment 62 and the Local Government Bond Act, the “**Authorizing Legislation**”), sales and use tax bonds to finance the costs of the following capital improvements of a public nature, including new facilities and/or improvements to existing facilities: (a) recreational facilities and improvements, including particularly, without limitation, land acquisition, construction of a multiple-use recreational facility and parking, which facility may include indoor swimming, bathhouse, therapy pool, athletic courts, walking track and other amenities, together with street, parking and drainage improvements therefor, extension of utilities, sidewalks, bicycle paths and utility relocations to such facilities, together with parking, furnishings, equipment, drainage, lighting, utility improvements and related traffic signals therefor, and to provide for future renovations and improvements to such facilities (the “**Recreational Improvements**”); and (b) emergency protection facilities and improvements, including particularly, without limitation, land acquisition, construction of an emergency services building, related administrative offices and parking, together with utility relocations to such facility, together with parking, furnishings, equipment, drainage, lighting, utility improvements and related traffic signals therefor, and to provide for future renovations and improvements to such facility, acquisition of emergency vehicles, apparatus and equipment (the “**Emergency Services Facilities**” and together with the Recreational Improvements, the “**Project**”); and

**WHEREAS**, at the special election held on August 11, 2015, a majority of the electors voting on the question approved the issuance of bonds in the maximum principal amount of \$10,000,000 allocated as follows: \$7,000,000 in maximum principal amount for the Recreational Improvements and \$3,000,000 in maximum principal amount for the Emergency Services Facilities; and

**WHEREAS**, at the special election held on August 11, 2015, a majority of the electors voting on the question also approved levying a sales and use tax at the rate of one percent (1%) on the receipts from the sales at retail within the City of all items that are subject to taxation under the Arkansas Gross Receipts Act of 1941, as amended (A.C.A. §§26-52-101, et seq.), and the receipts from storing, using, distributing or consuming within the City tangible personal property under the Arkansas Compensating Tax Act of 1949, as amended (A.C.A. §§26-53-101, et seq.) (collectively, the “**Sales and Use Tax**”); and

**WHEREAS**, the City has determined to issue not to exceed \$10,000,000 Sales and Use Tax Bonds, Series 2016 (the “**Bonds**”) in order to accomplish the Project; and

**WHEREAS**, proceeds of the Sales and Use Tax will be allocated as follows: (a) 7/8% is designated to be issued under the Capital Improvement Bond Act and allocated to the payment of principal and interest on the Bonds and (b) 1/8% is designated to be issued under the Local Government Bond Act and allocated to the City’s Operation and Maintenance Fund to fund the City’s general operations, including but not limited to, funds for the operation and maintenance of the Project and other City facilities, and to pay the principal of and interest on the Bonds; and

**WHEREAS**, the City is offering, and Crews & Associates, Inc (the “**Underwriter**”), is expected to agree to purchase for offering to the public all (but not less than all) of the Bonds, at the aggregate purchase price set forth in the Purchase Agreement (hereinafter defined); and

**WHEREAS**, in order for the Underwriter to market the Bonds, it is necessary to prepare a preliminary official statement (the “**Preliminary Official Statement**”) and bond purchase agreement (the “**Bond Purchase Agreement**”), and in order to secure the bonds and provide certain information to investors, it is necessary to prepare Trust Indenture (the “**Indenture**”) between the Issuer and Bank of the Ozarks, Little Rock, Arkansas (the “**Trustee**”) to establish the general provisions relating to the Bonds, provide for the security and payment of the Bonds and the rights of the owners thereof, an Official Statement (“**Official Statement**”) setting forth certain information with respect to the Bonds for the City and the respective owners of the Bonds, and a Continuing Disclosure Agreement (the “**Disclosure Agreement**”) between the City and Bank of the Ozarks, Little Rock, Arkansas, as dissemination agent, providing for the ongoing disclosure obligations of the City with respect to the Bonds (the Preliminary Official Statement, the Bond Purchase Agreement, the Indenture, the Official Statement, the Continuing Disclosure Agreement and all other documents contemplated thereby or executed in connection therewith referred to as the “**Bond Documents**”); and

**WHEREAS**, the City Council of the City desires to authorize the Mayor of the City to negotiate, approve the terms of and sign the Bond Documents, including, but not limited to the Bond Purchase Agreement, the Preliminary Official Statement, the Indenture, the Official Statement and the Continuing Disclosure Agreement; and

**WHEREAS**, the City intends to issue the Bonds as expeditiously as possible; and

**WHEREAS**, in order to market the Bonds and determine the total principal amount of the Bonds, the Underwriter requires a Preliminary Official Statement in a form deemed final pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Ozark, Arkansas:

**Section 1. The Project.** The Project shall be accomplished. The City Council hereby finds and declares that the useful life of the Project will be more than 30 years, which is longer than the term of the Bonds.

**Section 2. The Bonds.** Under the authority of the Authorizing Legislation, the Bonds are hereby authorized and ordered issued in the total principal amount of not to exceed \$10,000,000, the proceeds of which are necessary to accomplish the Project, including, without limitation, legal fees and other necessary expenses incidental to the accomplishment of the Project and to the issuance of the Bonds. The proceeds of the Bonds are hereby allocated as follows: up to \$7,000,000 in maximum principal amount for the Recreational Improvements and up to \$3,000,000 in maximum principal amount for the Emergency Services Facilities.

**Section 3. Pledge of Sales and Use Tax.** The City hereby expressly pledges and appropriates all of the revenues derived from the City from collections of the Sales and Use Tax to the payment of the principal of and interest on the Bonds when due at maturity or at redemption prior to maturity, administrative costs, the fees and expenses of the Trustee and any required arbitrage rebate due to the United States. The City covenants that the Sales and Use Tax shall not be repealed or reduced while any Bonds are outstanding. The City further covenants to use due diligence in collecting the Sales and Use Tax. Nothing herein shall prohibit the City from increasing the Sales and Use Tax from time to time, to the extent permitted by law, and no part of the revenues derived from any such increase shall become part of the revenues pledged to the Bonds.

**Section 4. Allocation of Tax.** Proceeds of the Sales and Use Tax are hereby allocated as follows: (a) 7/8% is designated to be issued under the Capital Improvement Bond Act and allocated to the payment of principal and interest on the Bonds and (b) 1/8% is designated to be issued under the Local Government Bond Act and allocated to the City's Operation and Maintenance Fund to fund the City's general operations, including but not limited to, funds for the operation and maintenance of the Project and other City facilities, and to pay the principal of and interest on the Bonds.

**Section 5. Authorization of Mayor.** The City Council hereby authorizes and directs the Mayor of the City to carry out or cause to be carried out all appropriate actions, to execute such other certificates or documents to evidence authority as authorized herein, and to take such other actions as the Mayor, in consultation with Bond Counsel, the Underwriter and the Trustee, shall consider necessary or advisable in connection with this Ordinance, the Preliminary Official Statement and the Bond Documents, in order to prepare for the issuance, sale, and delivery of the Bonds by the City, all as authorized by law and this Ordinance. The Underwriter, upon final

approval of the Mayor, is authorized to rely upon and to use the Preliminary Official Statement to market the Bonds to potential purchasers

**Section 6. Bond Purchase Agreement.** The Mayor of the City is hereby authorized to approve the form of a Bond Purchase Agreement between the City and the Underwriter, and the Mayor is authorized to execute the Bond Purchase Agreement on behalf of the City. The Purchase Agreement shall provide that the aggregate principal amount of the Bonds shall not exceed \$10,000,000 and that the Bonds shall bear interest with a net interest cost not to exceed five percent (5.0%). The final maturity date for the Bonds shall not exceed thirty (30) years from the date of issuance. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates) and shall be subject to redemption prior to maturity, all upon the terms and conditions to be set forth in the Indenture (hereinafter authorized) securing the Bonds. The Mayor is hereby authorized and directed, for and on behalf of the City, to execute the Purchase Agreement and to take all action required on the part of the City to fulfill its obligations under the Purchase Agreement.

**Section 7. Preliminary Official Statement.** The preparation of a Preliminary Official Statement and the distribution of such Preliminary Official Statement to prospective purchasers of the Bonds are hereby approved. The Mayor of the City is hereby authorized and directed to cause the Preliminary Official Statement to be delivered for and in the name of the City, with such provisions therein as shall be approved by the Mayor, who is authorized to execute and deliver to the Underwriter of the Bonds, a certificate when requested by the Underwriter of the Bonds, to the effect that the Preliminary Official Statement is deemed final for the purposes of Securities and Exchange Commission Rule 15c2-12 and is accurate and complete. The execution of the Preliminary Official Statement by the Mayor and the distribution of the Preliminary Official Statement in marketing the Bonds is hereby confirmed and ratified.

**Section 8. Official Statement.** The preparation of a final Official Statement and the distribution of such Official Statement to purchasers of the Bonds are hereby approved. The Mayor of the City is hereby authorized and directed to cause the Official Statement to be delivered for and in the name of the City, with such provisions therein as shall be approved by the Mayor, who is authorized to execute and deliver to the Underwriter of the Bonds, a certificate when requested by the Underwriter of the Bonds, to the effect that the Official Statement is accurate and complete.

**Section 9. Trust Indenture.** That to prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Indenture, and the City Recorder/Treasurer is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Recorder/Treasurer are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Mayor is hereby authorized to approve the form of Trust Indenture between the City and the Trustee to establish the general provisions relating to the Bonds, provide for the security and payment of the Bonds and the rights of the owners thereof, and the Mayor is hereby authorized to execute the Indenture on behalf of the City.

**Section 10. Continuing Disclosure Agreement.** The Disclosure Agreement, in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval, is hereby approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement on behalf of the City. The Mayor and the City Recorder/Treasurer are each authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement.

**Section 11. Further Authority.** That the Mayor and City Recorder/Treasurer, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to effect the execution and delivery of Trust Indenture, the performance of all obligations of the City under and pursuant to the Trust Indenture, the issuance, execution, sale and delivery of the Bonds and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. That the Mayor and the City Recorder/Treasurer be, and they are hereby, further authorized and directed, for and on behalf of the City, to execute all papers, documents, agreements, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof, including, but not limited to, the execution and delivery of the Purchase Agreement, the Disclosure Agreement, the Preliminary Official Statement, the Official Statement, and necessary tax certifications and agreements.

**Section 12. Minutes.** That the City Recorder/Treasurer is hereby authorized and directed to file in the office of the City Recorder/Treasurer, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person a copy of the documents referenced in this Ordinance and such documents shall be on file for inspection by any interested person.

**Section 13. Designation as "Qualified Tax Exempt Obligations".** The Bonds are hereby designated as "qualified tax exempt obligations" within the meaning of the Internal Revenue Code of 1986, as amended. The City represents that the aggregate principal amount of qualified tax exempt obligations issued for the benefit of the City in calendar year 2016 is not reasonably expected to exceed \$10,000,000.

**Section 14. Severability.** That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

**Section 15. Repeal if Conflict.** That all parts of the Municipal Code, City ordinances, City resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 16. Publication.** Following adoption, this Ordinance shall be published in a newspaper of general circulation in the City of Ozark, Arkansas, at least one time.

**Section 17. Emergency Clause.** It is hereby ascertained and declared that the Project must be constructed as soon as possible to accommodate the needs of the City, its inhabitants and

persons residing in the area to be served by the Project, without which the life, health, safety and welfare thereof are jeopardized, and that the issuance of the Bonds and the taking of the other action authorized by this Ordinance is necessary for the accomplishment thereof. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage.

PASSED: January 11, 2016.

APPROVED:

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Mayor

ATTEST:

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City Clerk

(SEAL)

**CERTIFICATE**

The undersigned, City Clerk of the City of Ozark, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 2016-\_\_\_\_, adopted at a regular session of the City Council of the City of Ozark, Arkansas, held at the regular meeting place in the city at 5:30 p.m. on the 11th day of January, 2016, and that Ordinance No. 2016-\_\_\_\_, is of record in Ordinance/Resolution Book No. \_\_\_\_\_, now in my possession.

GIVEN under my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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City Clerk

(SEAL)