

ORDINANCE NO. 2025-05-1173

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REFUNDING AND IMPROVEMENT BONDS FOR THE PURPOSE OF FINANCING AND REFINANCING THE COST OF CAPITAL IMPROVEMENTS; PLEDGING A 0.75% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, there was submitted to the qualified electors of the City of Tontitown, Arkansas (the "City") the questions of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (the "State") and under Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), (a) capital improvement bonds in the maximum aggregate principal amount of \$1,400,000 for the purpose of refunding the City's outstanding Sales and Use Tax Bonds, Series 2017 (the "Refunding"); (b) capital improvement bonds in the maximum aggregate principal amount of \$7,100,000 for the purpose of financing all or a portion of the costs of a new police station and any land acquisition, furnishings, equipment and parking, landscaping, signage, drainage, lighting, road and utility improvements related thereto (the "Police Improvements"); (c) capital improvement bonds in the maximum aggregate principal amount of \$7,100,000 for the purpose of financing all or a portion of the costs of new streets and any land acquisition, intersection, curb, gutter, drainage and utility improvements, sidewalks, trails, lighting and traffic control devices related thereto (the "Street Improvements"); (d) capital improvement bonds in the maximum aggregate principal amount of \$5,500,000 for the purpose of financing all or a portion of the costs of betterments and improvements to the City's water system, including particularly, without limitation, a new water storage tank (the "Water Improvements"); and (e) capital improvement bonds in the maximum aggregate principal amount of \$1,100,000 for the purpose of financing all or a portion of the costs of park and recreational facilities and improvements, including particularly, without limitation, a community center and improvements to Sbanotto Park and any furnishings, equipment and parking, landscaping, signage, drainage, lighting, road and utility improvements related thereto (the "Park and Recreational Improvements"); and

WHEREAS, at the special election held November 5, 2024, a majority of the electors voting on the questions approved the issuance of such bonds; and

WHEREAS, the City Council has determined to proceed with the Police Improvements, the Street Improvements, the Water Improvements and the Park and Recreational Improvements (collectively, the "Improvements") and the Refunding and to issue capital improvement bonds designated as the "City of Tontitown, Arkansas Sales and Use Tax Refunding and Improvement Bonds, Series 2025" (the "bonds") in the aggregate principal amount of \$20,330,000 allocated as follows: \$225,000 for the Refunding; \$6,865,000 for the Police Improvements; \$6,865,000 for the Street Improvements; \$5,315,000 for the Water Improvements; and \$1,060,000 for the Park and Recreational Improvements; and

WHEREAS, the City has made arrangements for the sale of the bonds to Stephens Inc. (the "Purchaser"), at a price of \$20,084,805.30 (principal amount plus net original issue premium of \$59,755.30 and less Underwriter's discount of \$304,950) (the "Purchase Price"), pursuant to a Bond Purchase Agreement between the Purchaser and the City (the "Purchase Agreement"), which has been presented to and is before this meeting; and

WHEREAS, the Preliminary Official Statement, dated May 1, 2025, offering the bonds for sale (the "Preliminary Official Statement"), has been presented to and is before this meeting; and

WHEREAS, the Continuing Disclosure Agreement between the City and Regions Bank, Little Rock, Arkansas (the "Disclosure Agreement"), providing for the disclosure obligations of the City with respect to the bonds, has been presented to and is before this meeting; and

WHEREAS, payment of the scheduled principal of and interest on the bonds when due is guaranteed by Build America Mutual Assurance Company, or any successor thereto or assignee thereof (the "Insurer"), pursuant to a municipal bond insurance policy (the "Insurance Policy"), as set forth in the Insurance Policy; and

WHEREAS, the Insurer will also issue a municipal bond debt service reserve insurance policy (the "Reserve Policy") in order to provide a debt service reserve for the bonds in the amount of one-half of the maximum annual principal and interest requirements on the bonds (based on a year ending June 1) (viz, \$631,159.38); and

WHEREAS, the Debt Service Reserve Agreement, relating to the Reserve Policy, between the City and the Insurer (the "Reserve Agreement") has been presented to and is before this meeting;

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

Section 1. The Refunding and the Improvements shall be accomplished, and the Mayor and City Clerk-Treasurer are hereby authorized to take all action necessary in connection therewith and to execute all required contracts and documents. The City's Sales and Use Tax Bonds, Series 2017 (the "Bonds Refunded") will be redeemed on the date the bonds are issued at a price of par plus accrued interest.

Section 2. The offer of the Purchaser for the purchase of the bonds from the City at the Purchase Price, for bonds bearing interest at the rates per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail is hereby accepted and the Purchase Agreement, in substantially the form submitted to this meeting, is approved and the bonds are hereby sold to the Purchaser. The Mayor is hereby authorized and directed to execute and deliver the Purchase Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Purchase Agreement.

Section 3. The Preliminary Official Statement is hereby approved and the previous use of the Preliminary Official Statement by the Purchaser in connection with the sale of the bonds is hereby in all respects approved and confirmed, and the Mayor is hereby authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City for use in connection with the sale of the bonds as set forth in the Purchase Agreement.

Section 4. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement for and on behalf of the City. The Mayor is authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement. Any legal fees and other administrative expenses incurred by the City in connection with the Disclosure Agreement (except audit fees) shall be considered administrative expenses that may be paid from moneys in the Bond Fund (hereinafter identified).

Section 5. Under the authority of the Constitution and laws of the State, including particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, the bonds are hereby authorized and ordered issued in the total principal amount of \$20,330,000 for the purpose of financing all or a portion of the costs of accomplishing the Refunding and the Improvements, paying expenses incidental thereto, providing a debt service reserve and paying expenses of issuing and insuring the bonds.

The bonds shall bear interest at the rates and shall mature on June 1 in the amounts and in the years as follows:

<u>Year</u> <u>(June 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest Rate</u>
2026	\$ 345,000	5.000%
2027	325,000	5.000
2028	345,000	5.000
2029	370,000	5.000
2030	385,000	5.000
2031	400,000	5.000
2032	415,000	5.000
2033	445,000	5.000
2034	460,000	5.000
2036	1,005,000	5.000
2038	1,100,000	5.000
2040	1,205,000	4.250
2045	3,530,000	4.625
2050	4,450,000	4.750
2055	5,550,000	4.250

The bonds shall be issuable only as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Unless the City shall otherwise direct, the bonds shall be numbered from 1 upward in order of issuance. Each bond shall have a CUSIP number but the failure of a CUSIP number to appear on any bond shall not affect its validity.

The bonds shall be registered initially in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), which shall be considered to be the registered owner of the bonds for all purposes under this Ordinance, including, without limitation, payment by the City of principal of, redemption price, premium, if any, and interest on the bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten bond for each stated maturity date which shall be immobilized in the custody of or on behalf of DTC with the beneficial owners having no right to receive the bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership of beneficial interests in the bonds by book-entry on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book-entry, the City having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the bonds. The bonds as such shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository, without further action by the City.

If any securities depository determines not to continue to act as a securities depository for the bonds for use in a book-entry system, the City may establish a securities depository/book-entry system relationship with another securities depository. If the City does not or is unable to do so, or upon request of the beneficial owners of all outstanding bonds, the City and the Trustee (as hereinafter defined), after the Trustee has made provision for notification of the beneficial owners by the then securities depository, shall permit withdrawal of the bonds from the securities depository, and authenticate and deliver bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the securities depository or its nominee, all at the cost and expense (including costs of printing definitive bonds) of the City, if the City fails to maintain a securities depository/book-entry system, or of the beneficial owners, if they request termination of the system.

Prior to issuance of the bonds, the City shall have executed and delivered to DTC a written agreement (the "Representation Letter") setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the City with respect to the bonds so long as the bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the bonds other than the registered owners, as shown on the registration books kept by Regions Bank, Little Rock, Arkansas, as trustee and paying agent (the "Trustee"). The Trustee shall take all action necessary for all representations of the City in the Representation Letter with respect to the Trustee to at all times be complied with.



The authorized officers of the Trustee and the City shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a securities depository for all or any portion of the bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Each bond shall be dated as of its date of delivery to the Purchaser. Interest on the bonds shall be payable on December 1, 2025, and semiannually thereafter on June 1 and December 1 of each year. Payment of each installment of interest shall be made to the person in whose name the bond is registered on the registration books of the City maintained by the Trustee, at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such bond subsequent to such Record Date and prior to such interest payment date, by check or draft to such owner at his address on such registration books. Principal of the bonds shall be payable at the corporate trust office of the Trustee.

Each bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from its dated date, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 7 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate of the Trustee upon any such bond shall be conclusive evidence that such bond has been authenticated and delivered under this Ordinance. The Certificate on any bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the bonds.

In case any bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new bond of like date, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated bond, or in lieu of and in substitution for such bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new bond. In the event any such bond shall have matured, instead of issuing a new bond, the City may pay the same without the surrender thereof. Upon the issuance of a new bond under this Section, the City may require the payment of a sum sufficient to cover any tax or other

governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The City shall cause books to be maintained for the registration and for the transfer of the bonds as provided herein and in the bonds. The Trustee shall act as the bond registrar. Each bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered bond or bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of bonds of any other authorized denomination or denominations. The City shall execute and the Trustee shall authenticate and deliver bonds which the registered owner making the exchange is entitled to receive. The execution by the City of any bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall be thereby authorized to authenticate and deliver such bond.

No charge shall be made to any owner of any bond for the privilege of transfer or exchange, but any owner of any bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. Neither the Trustee nor the City shall be required to transfer or exchange any bonds selected for redemption in whole or in part.

The person in whose name any bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest on any bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the bonds or the date fixed for redemption of any bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Section 6. The bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk-Treasurer and shall have impressed or imprinted thereon the seal of the City.

Payment of the principal of and interest on the bonds as due (by stated maturity or by scheduled mandatory redemption) is guaranteed by the Insurer pursuant to the Insurance Policy, as set forth in the Insurance Policy.

Section 7. The bonds and the Certificate shall be in substantially the following form and the Mayor and City Clerk-Treasurer are hereby expressly authorized and directed to make all recitals contained therein:

(Form of bond)

REGISTERED

REGISTERED

No. \_\_\_\_\_

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

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF WASHINGTON  
CITY OF TONTITOWN  
SALES AND USE TAX REFUNDING AND IMPROVEMENT BOND  
SERIES 2025

Interest Rate: \_\_\_\_\_ %

Maturity Date: June 1, \_\_\_\_\_

Dated Date: \_\_\_\_\_, 2025

Registered Owner: Cede & Co.

Principal Amount: \_\_\_\_\_ Dollars

CUSIP No.: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the City of Tontitown, County of Washington, State of Arkansas (the "City"), for value received, hereby promises to pay to the Registered Owner shown above upon the presentation and surrender hereof at the principal corporate trust office of Regions Bank, Little Rock, Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee"), on the Maturity Date shown above, the Principal Amount shown above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and to pay by check or draft to the Registered Owner shown above interest thereon, in like coin or currency from the interest commencement date described below at the Interest Rate per annum shown above, payable on December 1, 2025 and on each June 1 and December 1 thereafter, until payment of such Principal Amount or, if this bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this bond. Payment of each installment of interest shall be made to the person in whose name this bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this bond subsequent to such Record Date and prior to such interest payment date.



Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

This bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from the Dated Date shown above, or unless at the time of authentication hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

This bond is one of an issue of City of Tontitown, Arkansas Sales and Use Tax Refunding and Improvement Bonds, Series 2025, aggregating Twenty Million Three Hundred Thirty Thousand Dollars (\$20,330,000) in aggregate principal amount (the "bonds"), and is issued for the purpose of financing all or a portion of the costs of certain capital improvements and, along with other available funds, refunding the City's Sales and Use Tax Bonds, Series 2017, providing a debt service reserve and paying expenses of authorizing, issuing and insuring the bonds.

The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), particularly Amendment No. 62 to the Constitution of the State and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. \_\_\_\_\_ of the City, duly adopted on May 8, 2025 (the "Authorizing Ordinance"), and an election duly held at which the majority of the legal voters of the City voting on the questions approved the issuance of the bonds. Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City, the Trustee and the registered owners of the bonds. The bonds are special obligations of the City, payable from and secured by a first and prior pledge of the proceeds derived by the City from a 0.75% sales and use tax (the "Tax") levied by the City under the Authorizing Legislation and Ordinance No. 2024-07-119 of the City duly adopted on July 16, 2024, and the City hereby pledges its collections of the Tax for the payment of this bond.

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

(1) The bonds shall be redeemed by the City from Surplus Tax Receipts (defined below) and from proceeds of the bonds not needed for the purposes intended, in whole at any time or in part on any interest payment date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee may determine.)



The City has covenanted in the Authorizing Ordinance that Surplus Tax Receipts, being collections from the Tax in excess of the amount necessary to (1) ensure the prompt payment of the principal of, interest on and Trustee's and administrative fees in connection with the bonds as the same become due, (2) pay any arbitrage rebate due the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and (3) pay any amounts due with respect to the municipal bond insurance policy and the municipal bond debt service reserve insurance policy in connection with the bonds, must be used from time to time on each interest payment date as and to the extent available to redeem outstanding bonds prior to maturity.

In the case of any defeasance of the bonds, redemption of defeased bonds shall be scheduled on the basis of mandatory redemption requirements and assuming annual collections of the Tax in an amount equal to receipts for the most recent twelve-month period.

(2) The bonds are subject to redemption at the option of the City, from funds from any source, on and after June 1, 2031, in whole or in part at any time, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

If fewer than all of the bonds shall be called for redemption, the particular maturities of the bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the bonds of any one maturity shall be called for redemption, the particular bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

(3) To the extent not previously redeemed, the bonds maturing on June 1 in the years 2036, 2038, 2040, 2045, 2050 and 2055 are subject to mandatory sinking fund redemption by lot in such manner as the Trustee shall determine, on June 1 in the years and in the amounts set forth below, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption:

Bonds Maturing June 1, 2036

<u>Year</u> <u>(June 1)</u>	<u>Principal Amount</u>
2035	\$490,000
2036 (maturity)	515,000

Bonds Maturing June 1, 2038

<u>Year</u> <u>(June 1)</u>	<u>Principal Amount</u>
2037	\$535,000
2038 (maturity)	565,000

Bonds Maturing June 1, 2040

<u>Year</u> <u>(June 1)</u>	<u>Principal Amount</u>
2039	\$590,000
2040 (maturity)	615,000

Bonds Maturing June 1, 2045

<u>Year</u> <u>(June 1)</u>	<u>Principal Amount</u>
2041	\$640,000
2042	665,000
2043	710,000
2044	745,000
2045 (maturity)	770,000

Bonds Maturing June 1, 2050

<u>Year</u> <u>(June 1)</u>	<u>Principal Amount</u>
2046	\$810,000
2047	845,000
2048	885,000
2049	935,000
2050 (maturity)	975,000

Bonds Maturing June 1, 2055

<u>Year</u> <u>(June 1)</u>	<u>Principal Amount</u>
2051	\$1,020,000
2052	1,065,000
2053	1,105,000
2054	1,155,000
2055 (maturity)	1,205,000

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

Notice of redemption identifying the bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed and the date they shall be presented for payment shall be given by the Trustee, not less than 30 nor more than 60 days prior to the date fixed for redemption, by sending a copy of the redemption notice by first class mail, postage prepaid, or by other acceptable standard means of delivery, including facsimile or electronic communication, to all registered owners of bonds to be redeemed. Failure to send an appropriate notice or any such

notice to one or more registered owners of bonds to be redeemed shall not affect the validity of the proceedings for redemption of other bonds as to which notice of redemption is duly given in proper and timely fashion. All such bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date.

This bond is transferable by the Registered Owner shown above in person or by his attorney-in-fact duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this bond. Upon such transfer a new fully registered bond or bonds of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. This bond is issued with the intent that the laws of the State shall govern its construction.

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

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

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

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

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

CITY OF TONTITOWN, ARKANSAS

ATTEST:

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

\_\_\_\_\_  
City Clerk-Treasurer

(SEAL)

[A Statement of Insurance provided by the  
Insurer shall be placed on the bond]

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

Date of Authentication: \_\_\_\_\_.

REGIONS BANK  
Little Rock, Arkansas  
TRUSTEE

By \_\_\_\_\_  
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_ ("Transferor"), hereby sells,  
assigns and transfers unto \_\_\_\_\_, the within bond and all rights thereunder, and hereby  
irrevocably constitutes and appoints \_\_\_\_\_ as attorney to transfer the within bond on  
the books kept for registration thereof with full power of substitution in the premises.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Transferor

GUARANTEED BY:



NOTICE: Signature(s) must be guaranteed by a member of or participant in the Securities Transfer Agents Medallion Program (STAMP), or in another signature guaranty program recognized by the Trustee.

Section 8. The City hereby expressly pledges and appropriates all of the revenues derived by the City from the City's 0.75% sales and use tax levied by Ordinance No. 2024-07-119 adopted July 16, 2024 (the "Tax"), to the payment of the principal of and interest on the bonds when due at maturity or at redemption prior to maturity, to the payment of any amounts due the Insurer with respect to the Insurance Policy and the Reserve Policy and to the payment of the Trustee's and administrative fees and expenses and any arbitrage rebate due the United States Treasury under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The City covenants that the Tax shall never be repealed or reduced while any of the bonds are outstanding. The City further covenants to use due diligence in collecting the Tax. Nothing herein shall prohibit the City from increasing the 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 hereunder.

Section 9. (a) The City hereby designates Regions Bank, Little Rock, Arkansas as the bank which shall receive collections of the Tax (the "Pledged Revenues") from the State Treasurer and the City covenants to file a written designation thereof with the State Treasurer prior to the issuance of the bonds. The Trustee shall deposit all collections of the Tax as and when received into a special fund of the City in the Trustee which is hereby created and designated "2025 Sales and Use Tax Bond Fund" (the "Bond Fund") for the purpose of providing funds for the payment of principal of and interest on the bonds as they become due at maturity or at redemption prior to maturity, the Trustee's and administrative fees and expenses, any amounts due the Insurer with respect to the Insurance Policy and the Reserve Policy and any arbitrage rebate due the United States Treasury under Section 148 of the Code. Moneys in the Bond Fund shall be used on each interest payment date in the following order of priority as and when necessary:

- (1) to pay the interest on the bonds then due; and
- (2) to pay the principal of the bonds then due at maturity or upon mandatory sinking fund redemption; and
- (3) to make provision in the Bond Fund for payment of one-half of the principal next due on the bonds at maturity or upon mandatory sinking fund redemption if principal is not due on such interest payment date; and
- (4) to pay the Insurer for draws under the Reserve Policy; and
- (5) to pay the Trustee's and Insurer's administrative fees and expenses then due; and
- (6) to make any arbitrage rebate under Section 148(f) of the Code; and

- (7) to redeem bonds prior to maturity.

Notwithstanding the above, any arbitrage rebate or amounts due the Insurer with respect to the Insurance Policy and the Reserve Policy shall be paid not later than the date due, whether or not such date is an interest payment date.

The Bond Fund (excluding those moneys in the Special Redemption Account (hereinafter identified)) shall, except as provided in this Section, be depleted once a year except for a carryover amount not to exceed the greater of (i) one year's earnings on the Bond Fund or (ii) 1/12 of the annual debt service on the bonds. Any moneys in the Bond Fund shall, except as provided in this Section, be spent for one of the above purposes within a thirteen-month period beginning on the date of deposit, and any amount received from investment of money held in the Bond Fund will be spent within a one-year period beginning on the date of receipt.

(b) There shall be established and maintained in the Bond Fund a Debt Service Reserve Account. There shall be deposited into the Debt Service Reserve Account the Reserve Policy issued by the Insurer, which shall be in the face amount equal to one-half of the maximum annual principal and interest requirements on the bonds (based on a year ending June 1). Nothing other than the Reserve Policy will be held in the Debt Service Reserve Account; no cash or investments will be held therein. If moneys in the Bond Fund are not sufficient to make the payments described in clause (1) and (2) of subsection (a) above, the Debt Service Reserve Account shall be used for that purpose.

The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Account (other than the Reserve Policy). Notwithstanding anything to the contrary set forth in this Ordinance, amounts on deposit in the Debt Service Reserve Account shall be applied solely to the payment of debt service due on the bonds.

(c) When the moneys in the Bond Fund, including the Special Redemption Account, shall be and remain sufficient to pay (1) the principal of all the bonds then outstanding, (2) interest on the bonds until the next interest payment date, (3) the Trustee's and administrative fees and expenses, (4) any amounts due the Insurer with respect to the Insurance Policy and the Reserve Policy and (5) any arbitrage rebate due the United States Treasury under Section 148(f) of the Code, there shall be no obligation to make any further payments into the Bond Fund and any Pledged Revenues remaining in the Bond Fund after the principal of, premium, if any and interest on the bonds have been paid may be used by the City for any lawful purpose.

(d) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bonds, the Trustee's and administrative fees and expenses and any arbitrage rebate due the United States Treasury under Section 148(f) of the Code, as the same become due. There shall be established and maintained in the Bond Fund a Special Redemption Account into which there shall be deposited all Pledged Revenues remaining after making the applications required by clauses (1) through (6) of subsection (a) above ("Surplus Tax Receipts") and bond proceeds pursuant to Section 16 of this Ordinance. Moneys in the Special Redemption Account shall be used to redeem bonds prior to maturity.

(e) The Trustee is authorized and directed to withdraw moneys from the Bond Fund from time to time as necessary for paying principal of and interest on the bonds when due at maturity or at redemption prior to maturity and for making other authorized Bond Fund expenditures.

(f) The bonds shall be specifically secured by a pledge of the Pledged Revenues, which pledge in favor of the bonds is hereby irrevocably made according to the terms of this Ordinance, and the City, and the officers and employees of the City, shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

(g) Anything herein to the contrary notwithstanding, moneys in the Special Redemption Account and interest earnings thereon (1) shall be used from time to time to make up shortfalls in the Bond Fund, rather than redeeming bonds prior to maturity, and (2) shall not be used to redeem bonds more often than annually (rather than on each interest payment date) if the Trustee reasonably determines that such amounts available for redemption may be needed to make scheduled debt service payments.

Section 10. Any bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) cash fully insured by the Federal Deposit Insurance Corporation ("FDIC") and/or fully collateralized with direct obligations of the United States of America ("Defeasance Securities") sufficient to make such payment and/or (2) non-callable Defeasance Securities (provided that such deposit will not cause any of the bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

In case of any defeasance of the bonds, redemption of defeased bonds shall be scheduled on the basis of the mandatory redemption requirements and assuming annual collections of the Tax in an amount equal to receipts for the most recent twelve-month period.

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

When all the bonds shall have been paid within the meaning of this Ordinance, if the Trustee has been paid its fees and expenses, if there are no amounts due the Insurer with respect to the Insurance Policy and the Reserve Policy and if payment of any arbitrage rebate under Section 148(f) of the Code is made or provided for to the satisfaction of the Trustee, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such bonds to be paid over or delivered to or at the direction of the City.



At least three business days prior to any defeasance with respect to the bonds, the City shall, unless waived by the Insurer, deliver to the Insurer draft copies of an escrow agreement, an opinion of bond counsel regarding the validity and enforceability of the escrow agreement and the defeasance of the bonds and a verification report (a "Verification Report") prepared by a nationally recognized independent financial analyst or firm of certified public accountants regarding the sufficiency of the escrow fund. Such opinion shall be addressed to the Insurer and shall be in form and substance satisfactory to the Insurer. Such Verification Report shall be in the form and substance satisfactory to the Insurer and, unless waived by the Insurer, shall either be addressed to the Insurer or shall include a statement to the effect that such Verification Report may be relied upon by the Insurer. In addition, the escrow agreement shall provide that:

(1) Any substitution of securities following the execution and delivery of the escrow agreement shall require the delivery of a Verification Report, an opinion of bond counsel that such substitution will not adversely affect the exclusion from gross income of the holders of the bonds of the interest on the bonds for federal income tax purposes and the prior written consent of the Insurer, which consent will not be unreasonably withheld.

(2) The City will not exercise any prior optional redemption of bonds secured by the escrow agreement or any other redemption other than mandatory sinking fund redemptions unless (i) the right to make any such redemption has been expressly reserved in the escrow agreement and such reservation has been disclosed in detail in the official statement for the refunding bonds, and (ii) as a condition to any such redemption there shall be provided to the Insurer a Verification Report as to the sufficiency of escrow receipts without reinvestment to meet the escrow requirements remaining following any such redemption.

(3) The City shall not amend the escrow agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of the Insurer.

Section 11. The City covenants that it will not issue any additional bonds, or incur any other obligation, secured by a lien on or pledge of the Pledged Revenues.

Section 12. The bonds shall be callable for payment prior to maturity in accordance with the terms set out in the face of the bond form set forth in Section 7 of this Ordinance. The City hereby covenants to use bond proceeds not necessary for the purposes intended to redeem bonds on the first available interest payment date. The City further covenants to use Surplus Tax Receipts to redeem bonds prior to maturity.

Section 13. It is hereby covenanted and agreed by the City with the owners of the bonds that the City will faithfully and punctually perform all duties with reference to the Tax and the bonds required by the Constitution and laws of the State and by this Ordinance, including the collection of the Tax, as herein specified and covenanted and the applying of the Pledged Revenues as herein provided.



Section 14. The Trustee will keep or cause to be kept proper books of accounts and records in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues and such books shall be available for inspection by the City, the Purchaser and the owner of any of the bonds at reasonable times and under reasonable circumstances. The Trustee shall furnish a report to the City on a monthly basis of all receipts and disbursements of the Pledged Revenues received by the Trustee, which monthly report shall commence one month following the first month in which the Pledged Revenues are received by the Trustee.

Section 15. (a) Subject to the provisions of subparagraph (g) below, if there be any default in the payment of the principal of and interest on any of the bonds, or if the City defaults in the performance of any covenant contained in this Ordinance, the Trustee may, and shall, upon the written request of (1) the Insurer or (2) with the consent of the Insurer, the owners of not less than 10% in principal amount of the bonds then outstanding, by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the State and under this Ordinance, and to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State.

(b) No owner of any bond shall have any right to institute any suit, action, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State unless (1) such owner or the Trustee shall have given written notice of such default to the Insurer and (2) such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more owners of the bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of the outstanding bonds, and that any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided.

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

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

(e) No delay or omission of the Trustee, the Insurer or any owners of the bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to the Trustee, to the Insurer and to the owners of the bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

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

(g) Notwithstanding the above, upon the occurrence and continuance of a default, the Insurer shall be deemed to be the sole owner of the bonds for all purposes under this Ordinance, including, without limitation, for purposes of exercising remedies and approving amendments.

Section 16. When the bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to or at the direction of the Purchaser upon payment of the Purchase Price. Unless paid by the Purchaser as part of the Purchase Price, the amount necessary to pay the premiums for the Insurance Policy and the Reserve Policy shall be paid to the Insurer. The expenses of issuing the bonds shall be paid. The amount necessary to accomplish the Refunding shall be deposited with the trustee for the Bonds Refunded.

The balance of the Purchase Price shall be deposited into four special Construction Funds of the City hereby established with the Trustee (each a "Construction Fund" and collectively, the "Construction Fund"). The money to be deposited into the Construction Fund shall be allocated among the Improvements in proportion to the principal amount of bonds allocated for each purpose. Each Construction Fund shall be designated to reflect the purpose, e.g., "Police Construction Fund." The amounts credited to each Construction Fund shall be expended to accomplish the purpose for which such fund was created. Issuance costs and other expenses not specific to any one purpose shall be joint obligations to be paid from each Construction Fund in proportion to the initial moneys credited thereto. Disbursements shall be made from the Construction Fund on the basis of requisitions which shall specify the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; the purpose of payment and that the payment is a proper charge on the respective Construction Fund. Each requisition must be signed by the Mayor and the City Clerk-Treasurer. The Trustee shall keep records as to all payments made from the Construction Fund.

When the Improvements of a particular type (e.g., Police Improvements) have been completed and all required expenses have been paid and expenditures made from the Construction Fund established to accomplish such Improvements and the financing thereof, this fact shall, if moneys remain in such Construction Fund, be evidenced by a certificate signed by the Mayor, which certificate shall state, among other things, the date of the completion and that all obligations payable from such Construction Fund have been discharged. A copy of the certificate shall be filed with the Trustee, and upon receipt thereof the Trustee shall transfer any remaining balance into the Special Redemption Account in the Bond Fund.

Section 17. (a) Moneys held for the credit of the Construction Fund shall be invested and reinvested in Permitted Investments or other investments from time to time permitted by State law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(b) Moneys held for the credit of the Bond Fund shall be invested and reinvested in Permitted Investments, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when the moneys will be required for payment of the principal of and interest on the bonds when due.

(c) Obligations so purchased as an investment of moneys in any fund shall be deemed at all times to be a part of such fund and the interest accruing thereon and any profit realized from such investments shall be credited to such fund, and any loss resulting from such investment shall be charged to such fund.

(d) The Trustee shall invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(e) "Permitted Investments" are defined to mean

- (1) Direct or fully guaranteed obligations of (including obligations issued or held in book entry form on the books of) the United States of America ("Government Securities");
- (2) Direct obligations of an agency, instrumentality or government-sponsored enterprise created by an act of the United States Congress and authorized to issue securities or evidences of indebtedness, regardless of whether the securities or evidences of indebtedness are guaranteed for repayment by the United States Government;
- (3) Demand deposits or certificates of deposit of banks, including the Trustee, which are insured by the FDIC, or if in excess of insurance coverage, are collateralized by Government Securities or other securities authorized by State law to secure public deposits; and



- (4) Money market funds invested exclusively in Government Securities and the obligations described in clause (2) above.

(f) All investments and deposits in the Bond Fund shall have a par value (or market value when less than par), exclusive of accrued interest at all times at least equal to the amount of money credited to such funds and shall be made in such a manner that the money required to be expended from any fund will be available at the proper time or times.

(g) Investments of moneys in all funds shall be valued in terms of current market value as of the last day of each year, except that direct obligations of the United States (State and Local Government Series) in book-entry form shall be continuously valued at par or face principal amount.

Section 18. Regions Bank, Little Rock, Arkansas is hereby appointed to act as Trustee and Paying Agent pursuant to this Ordinance. The Trustee shall be responsible for the exercise of good faith and reasonable prudence in the execution of its trusts. The recitals in this Ordinance and in the bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by (1) the Insurer or (2) the owners of not less than 10% in principal amount of bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign by giving 60 days' notice in writing to the City Clerk-Treasurer, the Insurer and the owners of the bonds. The Insurer, the majority in principal amount of the owners of the outstanding bonds or the City, so long as it is not in default hereunder, at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee, the City shall designate a new Trustee by a written instrument filed in the office of the City Clerk-Treasurer and the Insurer. The new Trustee shall be a bank or a trust company duly authorized to exercise trust powers and subject to examination by federal or state authority. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the bonds agree. Such written acceptance shall be filed with the City Clerk-Treasurer and the Insurer, and a copy thereof shall be placed in the bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee. The Trustee's resignation shall take effect upon the acceptance of the trusts by the successor Trustee. Notwithstanding the above, no removal, resignation or termination of the Trustee shall take effect until a successor Trustee, acceptable to the Insurer, shall be qualified and appointed. The Insurer shall receive prior written notice of any name change of the Trustee or the resignation or removal of the Trustee.

Any successor trustee must be (i) a national banking association that is supervised by the Office of the Comptroller of the Currency and has at least \$250 million of assets, (ii) a state-chartered commercial bank that is a member of the Federal Reserve System and has at least \$1 billion of assets or (iii) otherwise approved by the Insurer in writing.



Section 19. (a) The terms of this Ordinance shall constitute a contract between the City and the owners of the bonds and no variation or change in the undertaking herein set forth shall be made while any of the bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(b) The Trustee may consent to any variation or change in this Ordinance that the Trustee determines is not to the material prejudice of the owners of the bonds or in order to cure any ambiguity, formal defect or omission in this Ordinance or any amendment hereto, with the prior written consent of the Insurer but without the consent of the owners of the bonds.

(c) The Insurer and the owners of not less than 75% in aggregate principal amount of the bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any bond, or (2) a reduction in the principal amount of any bond or the rate of interest thereon, or (3) the creation of a pledge of the Pledged Revenues superior to or on a parity with the pledge created by this Ordinance, or (4) a privilege or priority of any bond or bonds over any other bond or bonds, or (5) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

(d) The City shall send copies of any amendments or supplements to this Ordinance to the Insurer and any rating agency which has assigned a rating to the bonds. Any amendments or supplements to this Ordinance shall require the prior written consent of the Insurer with the exception of amendments or supplements: (i) to cure any ambiguity or formal defect or omissions or to correct any inconsistent provisions in this Ordinance or in any supplement hereto, or (ii) to grant or confer upon the holders of the bonds any additional rights, remedies, powers, authority or security that may lawfully be granted or conferred upon the holders of the bonds, or (iii) to add to the conditions, limitations and restrictions on the issuance of bonds or other obligations under the provisions of this Ordinance other conditions, limitations and restrictions hereafter to be observed, or (iv) to add to the covenants and agreements of the City in this Ordinance other covenants and agreements thereafter to be observed by the City or to surrender any right or power therein reserved to or conferred upon the City.

Section 20. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the bonds to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the bonds and the Pledged Revenues will not be used directly or indirectly in such manner as to cause the bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of the Improvements, the improvements financed by the Bonds Refunded (the "Prior Improvements") or the proceeds of the bonds, in such manner

as to cause the bonds to be "private activity bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of the bonds to make or finance loans to any person, and (ii) that while the bonds are outstanding the Improvements and the Prior Improvements will only be used by state or local governmental units or by persons on a basis as members of the general public.

(c) The City covenants that it will not reimburse itself from bond proceeds for any costs paid prior to the date the bonds are issued except in compliance with United States Treasury Regulation § 1.150-2 (the "Regulation"). Resolution No. 2025-02-1149R, adopted February 25, 2025, shall be considered an "official intent" for purposes of the Regulation.

(d) The City shall pay any arbitrage rebate due the United States Treasury under Section 148 of the Code from moneys in the Bond Fund. The costs of calculating the arbitrage rebate due and the arbitrage rebate amount shall be considered to be administrative costs payable from moneys in the Bond Fund.

(e) The City will retain all documents and records pertaining to the bonds, the Improvements and the Prior Improvements for the life of the bonds plus an additional three years.

Section 21. The City covenants that it will take no action which would cause the bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. The City further covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the bonds are issued, a statement concerning the bonds which contains the information required by Section 149(e) of the Code.

Section 22. (a) The City shall repay the Insurer any draws under the Reserve Policy and pay all related reasonable charges, fees, costs, losses, liabilities and expenses ("Administrative Expenses") that the Insurer may pay or incur. Interest shall accrue and be payable on such draws from the date of payment by the Insurer at the Late Payment Rate. "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, the Prime Rate shall be the publicly announced prime or base lending rate of such national bank, banking association or trust company bank as the Insurer, in its sole and absolute discretion, shall specify.

Repayment of draws under the Reserve Policy and accrued interest thereon at the Late Payment Rate and payment of Administrative Expenses (collectively, "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to the Insurer shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to the Insurer on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy.

All cash and investments in the Debt Service Reserve Account, if any, shall be transferred to the Debt Service Account in the Bond Fund for payment of the debt service on the bonds before any drawing may be made on the Reserve Policy or on any alternative credit instrument on deposit in the Debt Service Reserve Account in lieu of cash (the "Alternative Credit Instrument").

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts in the Debt Service Reserve Account. Draws on all Alternative Credit Instruments (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available under each such Alternative Credit Instrument) after applying all available cash and investments in the Debt Service Reserve Account. Payment of Policy Costs and reimbursement of amounts with respect to other Alternative Credit Instruments shall be made on a pro-rata basis prior to replenishment of any cash drawn from the Debt Service Reserve Account. For the avoidance of doubt, "available coverage" means the coverage then available for disbursement pursuant to the terms of the applicable Alternative Credit Instrument without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

(b) Draws on the Reserve Policy may only be used to make payments of principal and interest on the bonds (and for the avoidance of doubt, not any other obligations of the City).

(c) If the City shall fail to pay any Policy Costs in accordance with the requirements of paragraph (a) above, the Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under this Ordinance other than remedies which would adversely affect owners of the bonds.

(d) This Ordinance shall not be discharged until all Policy Costs owing to the Insurer shall have been paid in full. The City's obligation to pay such amounts shall expressly survive payment in full of the bonds.

(e) The Reserve Policy shall expire and terminate on the earlier of the date that the bonds are no longer outstanding and the final maturity date of the bonds.

(f) In order to secure the City's payment obligations with respect to Policy Costs, there is hereby granted and perfected in favor of the Insurer a security interest (subordinate only to that of the owners of the bonds) in the Pledged Revenues.



(g) The Trustee shall ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of paragraph (a) above and shall provide notice to the Insurer in accordance with the terms of the Reserve Policy at least five business days prior to each date upon which interest or principal is due on the bonds.

The Trustee shall, within two business days of the date due, give notice to the Insurer of any failure by the City to make timely payment into the Bond Fund as set forth herein.

Section 23. All references in this Ordinance to the Insurer shall cease when the bonds have been paid in full or defeased as provided herein and there are no amounts due the Insurer in connection with the Insurance Policy or the Reserve Policy.

Section 24. (a) The City will provide the Insurer with all notices and other information it is obligated to provide under the Disclosure Agreement and to the holders of the bonds or the Trustee under this Ordinance.

The notice address of the Insurer is: Build America Mutual Assurance Company, 200 Liberty Street, 27th Floor, New York, NY 10281, Attention: Surveillance, Re: Policy No. \_\_\_\_\_, Telephone: (212) 235-2500, Telecopier: (212) 962-1710, Email: [notices@buildamerica.com](mailto:notices@buildamerica.com). In each case in which notice or other communication refers to an event of default or a claim on the Insurance Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at [claims@buildamerica.com](mailto:claims@buildamerica.com) or at Telecopier: (212) 962-1524 and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(b) In the event that principal and/or interest due on the bonds shall be paid by the Insurer pursuant to the Insurance Policy, the bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, the assignment and pledge granted hereby and all covenants, agreements and other obligations of the City to the registered owners shall continue to exist and shall run to the benefit of the Insurer, and the Insurer shall be subrogated to the rights of such registered owners.

In the event that on the second business day prior to any payment date on the bonds, the Trustee has not received sufficient moneys to pay all principal of and interest on the bonds due on such payment date, the Trustee shall immediately notify the Insurer or its designee on the same business day by telephone or electronic mail, of the amount of the deficiency. If any deficiency is made up in whole or in part prior to or on the payment date, the Trustee shall so notify the Insurer or its designee.

In addition, if the Trustee has notice that any holder of the bonds has been required to disgorge payments of principal of or interest on the bonds pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy law, then the Trustee shall notify the Insurer or its designee of such fact by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of the Insurer.



The Trustee shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for holders of the bonds as follows:

- (i) If there is a deficiency in amounts required to pay interest and/or principal on the bond, the Trustee shall (1) execute and deliver to the Insurer, in form satisfactory to the Insurer, an instrument appointing the Insurer as agent and attorney-in-fact for such holders of the bonds in any legal proceeding related to the payment and assignment to the Insurer of the claims for interest on the bonds, (2) receive as designee of the respective holders (and not as paying agent) in accordance with the tenor of the Insurance Policy payment from the Insurer with respect to the claims for interest so assigned, (3) segregate all such payments in a separate account (the "BAM Policy Payment Account") to only be used to make scheduled payments of principal of and interest on the bonds, and (4) disburse the same to such respective holders; and
- (ii) If there is a deficiency in amounts required to pay principal of the bonds, the Trustee shall (1) execute and deliver to the Insurer, in form satisfactory to the Insurer, an instrument appointing the Insurer as agent and attorney-in-fact for such holder of the bonds in any legal proceeding related to the payment of such principal and an assignment to the Insurer of the bonds surrendered to the Insurer, (2) receive as designee of the respective holders (and not as paying agent) in accordance with the tenor of the Insurance Policy payment therefore from the Insurer, (3) segregate all such payments in the BAM Policy Payment Account to only be used to make scheduled payments of principal of and interest on the bonds and (4) disburse the same to such holders.

The Trustee shall designate any portion of payment of principal on bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of bonds registered to the then current holder, whether DTC or its nominee or otherwise, and shall issue a replacement bond to the Insurer, registered in the name directed by the Insurer, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement bond shall have no effect on the amount of principal or interest payable by the City on any bond or the subrogation or assignment rights of the Insurer.

Payments with respect to claims for interest on and principal of bonds disbursed by the Trustee from proceeds of the Insurance Policy shall not be considered to discharge the obligation of the City with respect to such bonds, and the Insurer shall become the owner of such unpaid bonds and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraphs or otherwise. This Ordinance shall not be discharged or terminated unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.

Irrespective of whether any such assignment is executed and delivered, the City and the Trustee agree for the benefit of the Insurer that:

- (i) To the extent the Insurer makes payments directly or indirectly (e.g., by paying through the Trustee), on account of principal of or interest on the bonds, the Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the City with interest on bond principal (but not bond interest), as provided and solely from the sources stated in this Ordinance and the bonds; and
- (ii) The Insurer will be paid the amount of such principal and interest, with interest on bond principal (but not bond interest), as provided herein and in the bonds, but only from the sources and in the manner provided herein and therein for the payment of principal of and interest on the bonds to holders, and the Insurer will be treated as the owner of such rights to the amount of such principal and interest.

(c) The City agrees unconditionally that it will pay or reimburse the Insurer on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that the Insurer may pay or incur, including, but not limited to, fees and expenses of the Insurer's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of this Ordinance ("Administrative Costs"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of the Insurer spent in connection with the actions described in the preceding sentence.

Notwithstanding anything herein to the contrary, the City agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy and (ii) interest on bond principal (but not bond interest) paid under the Insurance Policy from the date paid by the Insurer until payment thereof in full by the City, payable to the Insurer at the stated interest rate for each such bond (collectively, the "Bond Insurer Reimbursement Amounts") compounded semi-annually. The City hereby covenants and agrees that the Bond Insurer Reimbursement Amounts are payable from and secured by a lien on and pledge of the Pledged Revenues and other collateral pledged to the bonds on a parity with debt service due on the bonds.

(d) The rights granted to the Insurer under this Ordinance to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the holders of the bonds and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the holders of the bonds or any other person is required in addition to the consent of the Insurer.



(e) The Insurer shall be entitled to pay principal or interest on the bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Insurance Policy) in accordance with this Ordinance, whether or not the Insurer has received a claim upon the Insurance Policy.

(f) Any amendment, supplement, modification to, or waiver of, this Ordinance that requires the consent of holders of the bonds or adversely affects the rights or interests of the Insurer shall be subject to the prior written consent of the Insurer.

(g) Any reorganization or liquidation plan with respect to the City must be acceptable to the Insurer. The Trustee and each owner of the bonds hereby appoint the Insurer as their agent and attorney-in-fact with respect to the bonds and agree that the Insurer may at any time during the continuation of any proceeding by or against the City under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including without limitation, (i) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a "Claim"), (ii) the direction of any appeal of any order relating to any Claim, (iii) the posting of any surety, supersedeas or performance bond pending any such appeal, and (iv) the right to vote to accept or reject any plan of adjustment. In addition, the Trustee and each owner of the bonds delegate and assign to the Insurer, to the fullest extent permitted by law, the rights of the Trustee and each owner of the bonds with respect to the bonds in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any Insolvency Proceeding.

(h) Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of a default, the Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the holders of the bonds or the Trustee for the benefit of the holders of the bonds under this Ordinance. No default may be waived without the Insurer's written consent.

(i) If an Insurer Default (as defined below) shall occur and be continuing, then, notwithstanding anything herein to the contrary, (1) if at any time prior to or following an Insurer Default, the Insurer has made payment under the Insurance Policy, to the extent of such payment the Insurer shall be treated like any other holder of the bonds for all purposes, including giving of consents, and (2) if the Insurer has not made any payment under the Insurance Policy, the Insurer shall have no further consent rights until the particular Insurer Default is no longer continuing or the Insurer makes a payment under the Insurance Policy, in which event, the foregoing clause (1) shall control. For purposes of this paragraph, "Insurer Default" means: (A) the Insurer has failed to make any payment under the Insurance Policy when due and owing in accordance with its terms; or (B) the Insurer shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a

petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take action for the purpose of effecting any of the foregoing; or (C) any state or federal agency or instrumentality shall order the suspension of payments on the Insurance Policy or shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of the Insurer (including without limitation under the New York Insurance Law).

(j) The Insurer is recognized as and shall be deemed to be a third party beneficiary of this Ordinance and may enforce the provisions of this Ordinance.

(k) No grace period shall be permitted for payment defaults on the bonds. No grace period for a covenant default shall exceed 30 days without the prior written consent of the Insurer.

Section 25. The Reserve Agreement, in substantially the form submitted to this meeting is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute and deliver the Reserve Agreement on behalf of the City, and the Mayor and other officers of the City are authorized to execute and deliver such undertakings as may be appropriate to the securing of the Reserve Policy.

Section 26. All collections of the City's 0.75% sales and use tax pledged to the payment of the Bonds Refunded that are received after the bonds are issued and that are not necessary to pay the principal of, interest on, Trustee's and administrative fees and expenses and any arbitrage rebate in connection with the Bonds Refunded shall be deposited into the Bond Fund as and when received and are hereby appropriated and shall be used for the purposes for which other moneys in the Bond Fund may be expended.

Section 27. All moneys in the 2017 Sales and Use Tax Bond Fund, including the Debt Service Reserve Account therein, being maintained in connection with the Bonds Refunded are hereby appropriated and shall either (a) be used to accomplish the Refunding, (b) be used to pay the costs of the arbitrage rebate report for the Bonds Refunded and any arbitrage rebate determined to be due or (c) be deposited into the Bond Fund and become a part of the Pledged Revenues hereunder.

Section 28. The Mayor is hereby authorized and directed to work with Friday, Eldredge & Clark, LLP, as bond counsel, to review and revise, as needed, its written procedures to monitor compliance with federal tax requirements with respect to tax-exempt obligations of the City.

Section 29. The provisions of this Ordinance are separable and in the event that any section or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of this Ordinance.


Section 30. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.



Section 31. It is hereby ascertained and declared that the Improvements are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The Improvements cannot be accomplished without the issuance of the bonds, which cannot be sold at the interest rates specified herein unless this Ordinance is immediately effective. Therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.

PASSED: May 8, 2025.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk-Treasurer

(SEAL)

## CERTIFICATE

The undersigned, City Clerk-Treasurer of the City of Tontitown, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 2025-05-1173 passed at a special session of the City Council of the City, held at the regular meeting place of the City Council at 3:30 p.m. on the 8th day of May, 2025, and that the Ordinance is of record in Ordinance Record Book No. \_\_\_\_, Page \_\_\_\_, now in my possession.

GIVEN under my hand and seal this 8th day of May, 2025.

  
\_\_\_\_\_  
City Clerk-Treasurer

(SEAL)