

**CITY OF MATTOON, ILLINOIS
CITY COUNCIL AGENDA
October 28, 2015
5:30 P.M.**

5:30 PM BUSINESS MEETING

Pledge of Allegiance

Roll Call

NEW BUSINESS

- 1. Motion – Approve Council Decision Request 2015-1643: Awarding the bid of \$5,566,541.00 from Curry Construction for the CSO Satellite Treatment Facility Project. (Cox)**
- 2. Motion – Adopt Ordinance No. 2015-5380: Authorizing and providing for the City of Mattoon to execute, enter into and perform a loan agreement with the Illinois Environmental Protection Agency for the purpose of paying a part of the cost of constructing, improving and extending the City’s Sewer Facilities, and making certain covenants in providing for the operation of the city’s separate sewerage system. (Owen)**

Adjourn

NEW BUSINESS

**City of Mattoon
Council Decision Request**

MEETING DATE: 10/28/2015 CDR NO: 2015-1643

SUBJECT: Bid Award - CSO Satellite Treatment Facility

SUBMITTAL DATE: 10/22/2015

SUBMITTED BY: Dean Barber, Public Works Director

APPROVED FOR COUNCIL AGENDA: Kyle Gill, City Administrator

EXHIBITS (If applicable): Location Map, Site Plan

EXPENDITURE	AMOUNT	CONTINGENCY FUNDING
ESTIMATE: \$5,566,541.00	BUDGETED: \$9,500,000.00	REQUIRED: \$0

IF IT IS THE WISH OF THE COUNCIL TO SUPPORT RECOMMENDATIONS CONTAINED IN THIS REPORT, THE FOLLOWING MOTION IS SUGGESTED:

“I move to approve the bid in the amount of \$5,566,541.00 from Curry Construction for the CSO Satellite Treatment Facility Project.”

SUMMARY OF THE TOPIC FOR WHICH A COUNCIL DECISION IS REQUESTED:

A bid opening was held on August 12 for the construction of the CSO Treatment Facility near Riley Creek. The Bid Tabulations and a Site Plan are attached.

This is the first phase of the project. CMT is continuing design of the piping to connect the existing combined sewer overflows to the new facility. Both phases of the project are required to be complete by December 31, 2016.

Date: 8/12/2015 Time: 11:00 AM Bid Item: Dean Barber Susan O'Brien	Name & Address of Bidder	Christy-Foltz, Inc. PO Box 828 Decatur, IL 62525 217-428-8601	Curry Construction PO Box 1053 Mattoon, IL 61938 217-234-2250	Gruhloh Construction, Inc. PO Box 684 Effingham, IL 62401 217-342-4157	Kieffer Brothers Construction Co., Inc. 933 W. 3rd Street Mt. Carmel, IL 62863 618-262-5108	Korte & Luitjohn Contractors, Inc. 12052 Highland Road Highland, IL 62249 618-654-9877	Plocher Construction 2808 Thole-Plocher Rd Highland, IL 62249 618-654-9408
CSO Satellite Treatment Facility - Riley Creek	\$8,276,415.00	\$5,566,541.00	\$6,896,000.00	\$7,067,377.00	\$6,658,500.00	\$7,290,000.00	
	River City Construction LLC 1509 N. Main Street Benton, IL 62812 618-435-2612	Samron Midwest Contracting Inc. PO Box 1555 Murphysboro, IL 62966 618-687-5500	Thieneman Construction, Inc. 17241 Foundation Parkway Suite 100 Westfield, IN 46074 317-867-3462	William Brothers Construction, Inc. PO Box 1366 Peoria, IL 61654 309-688-0416			
	\$7,710,000.00	\$8,787,000.00	\$6,790,000.00	\$6,945,000.00			

ORDINANCE NO. 2015-5380

OF THE

**CITY OF MATTOON,
COLES COUNTY, ILLINOIS**

PASSED

OCTOBER 28, 2015

NOT TO EXCEED

\$6,413,451

**SEWERAGE SYSTEM REVENUE BONDS
(IEPA WATER POLLUTION CONTROL REVOLVING LOAN PROGRAM)
SERIES 2015**

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Exhibit A - Form of Bond

ORDINANCE NO. 2015-5380

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE CITY OF MATTOON, COLES COUNTY, ILLINOIS TO EXECUTE, ENTER INTO AND PERFORM A LOAN AGREEMENT WITH THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY FOR THE PURPOSE OF PAYING A PART OF THE COST OF CONSTRUCTING, IMPROVING AND EXTENDING THE CITY'S SEWER FACILITIES, AND MAKING CERTAIN COVENANTS IN PROVIDING FOR THE OPERATION OF THE CITY'S SEWERAGE SYSTEM AND THE PLEDGE, DEDICATION, COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES TO BE DERIVED FROM THE OPERATION THEREOF.

WHEREAS, the City of Mattoon, Coles County, Illinois (the "**City**"), operates a municipally-owned sewerage system (the "**System**") in accordance with the provisions of Division 141 of Article 11 of the Illinois Municipal Code, Section 5/11-141-1 *et seq.* of Chapter 65 of the Illinois Compiled Statutes (as supplemented and amended, including by the Local Government Debt Reform Act, the Intergovernmental Cooperation Act, Section 10 of Article VII of the Constitution of Illinois, the Registered Bond Act, the Illinois Bond Replacement Act, the Bond Authorization Act and applicable Illinois and federal laws (including Section 5/19.1 *et seq.* of Chapter 415 of the Illinois Compiled Statutes, the Water Quality Act of 1987 (33 U.S.C.A. Sec. 1251 *et seq.*)), in connection with the Illinois Environmental Protection Agency's ("**IEPA**") Water Pollution Control Revolving Loan Program (the "**Program**")), (collectively, the "**Act**"); and

WHEREAS, the City Council of the City (the "**Corporate Authorities**") has determined that it is advisable, necessary and in the best interest of the City's public health, safety and welfare to undertake a project providing for the acquisition, construction, extension and improvement of the existing sewerage system of the City, including the construction of a combined sewer overflow satellite treatment facility (the "**Project**"), substantially in accordance with the related plans, specifications and cost estimate therefor prepared by the City's engineers, Crawford, Murphy & Tilly, Inc., Springfield, Illinois, which are now on file in the office of the City Clerk and available for public inspection (to which estimate the City adds an amount for costs of issuance); and

WHEREAS, the estimated cost of acquiring, constructing and installing the Project, and necessary interest during acquisition, construction and installation, reserves, engineering, legal, financial, discount, printing and publication costs and other expenses preliminary to and in connection with the Project and its financing is anticipated to be paid in whole or in part from proceeds of the hereinafter described obligations; and

WHEREAS, costs of the Project, for which the City has insufficient funds, are expected to be paid from funds on hand or already advanced therefor, available grant proceeds, if any, and from obligations payable from the revenues of the System and issued pursuant to the Act, this Ordinance and ordinances preliminary and supplemental to this Ordinance authorizing and providing for the issuance of such obligations, prescribing the details of such obligations and providing for the pledge, dedication, collection, segregation and distribution of the revenues of the System, which obligations are expected to be purchased by the State of Illinois acting by and through the IEPA from funds available therefor in connection with the Program; and

WHEREAS, prior to the adoption of this Ordinance, the Corporate Authorities on June 17, 2015, adopted Ordinance No. 2015-5379 (the **“Preliminary Ordinance”**) and caused such Preliminary Ordinance to be published in the *Mattoon Journal Gazette – Charleston Times Courier*, a newspaper published in Decatur, Illinois, and of general circulation in Mattoon, Illinois, with respect to which no petition has been requested from or received by the City Clerk; and

WHEREAS, the City has submitted to the IEPA an Application for Financial Assistance related to the Project (Project L17-4844) (as supplemented and amended), which the IEPA has approved or will approve, and the City and the IEPA propose to enter into a Loan Agreement (Project L17-4844) (in the form prepared or to be prepared by the IEPA for financing facilities such as the Project, to be completed, including with insertions, deletions and modifications, in a manner not inconsistent with this Ordinance, and as supplemented and amended, the **“Loan Agreement”**); and

WHEREAS, upon entering into the Loan Agreement, the City will not have outstanding any other bonds or obligations payable from the revenues derived from the operation of the System other than the City’s (a) IEPA Loan L17-1187 (the **“1997 IEPA Loan”**) approved by Resolution No. 97-2034 on August 19, 1997 (the **“1997 IEPA Resolution”**) and (b) General Obligation Refunding Bonds (Alternate Revenue Source), Series 2014 (the **“Series 2014 Bonds”** and, together with the Loan Agreement or related bond and any future obligation issued or delivered by the City on a parity therewith, the **“Parity Obligations”**) authorized by Ordinance No. 2014-5368 on May 20, 2014 (the **“Series 2014 Ordinance”** and, together with this Ordinance and any authorizing resolution or ordinance for any of the Parity Obligations, the **“Parity Ordinances”**); and

WHEREAS, in order to facilitate reference, and with no intent to define or limit the provisions hereof, this Ordinance is divided into sections, with titles, as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MATTOON, COLES COUNTY, ILLINOIS, as follows:

Section 1. Preambles and Estimate. The Corporate Authorities hereby find that the representations and statements set forth above in the recitals to this Ordinance are true, correct and complete, and hereby incorporate them into this Ordinance. The Corporate Authorities have caused an estimate to be made of the cost of constructing, extending and improving the System facilities in and for the City, as described above, all in accordance with the detailed plans and specifications previously approved by the Corporate Authorities and now on file in the office of the City Clerk for public inspection and hereby estimate that the total cost thereof is approximately \$6,413,451, of which up to \$6,413,451 is to be paid from the proceeds derived from the Loan Agreement and the related bond.

Section 2. Useful Life. The Corporate Authorities hereby determine the period of usefulness of the hereinabove-described Project to be at least twenty-one (21) years from the date of completion of the construction, extension and improving thereof by undertaking the Project.

Section 3. Insufficient Funds. The City does not have sufficient funds available for the purpose of paying the costs of the Project, and for the purpose of paying all or a part of the cost thereof it will require the City to enter into, execute, deliver and perform the Loan Agreement and the related bond.

Section 4. Authorization of Loan Agreement. For the purpose of defraying a part of the costs of the Project, the City is hereby authorized to enter into the Loan Agreement and issue the related bond under this Ordinance.

(a) The representations, warranties, agreements, covenants, undertakings and other obligations made and contained in the Loan Agreement shall be and are hereby authorized and approved. The Loan Agreement and related bond shall be junior and subordinate to the 1997 IEPA Loan, and in the event of any default in the payment of the debt service obligations of the 1997 IEPA Loan and the Parity Obligations, all of the Net Revenues (as defined herein) will be applied solely to the payment of the principal of and interest on the 1997 IEPA Loan until such default is cured or the 1997 IEPA Loan is paid in full, thereafter the Net Revenues will be applied to the payment of the principal of and interest on the Parity Obligations in an equitable manner. The Loan Agreement and related bond shall stand on a parity and be equally and ratably secured with respect to the payment of the debt service obligations from the Net Revenues and in all other respects with the Parity Obligations. The Loan Agreement and related bond shall not have any priority with respect to the payment of the debt service obligations from said Net Revenues or otherwise over the Parity Obligations and the Parity Obligations shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Loan Agreement or related bond.

(i) The Loan Agreement and the related bond shall be and are hereby authorized and approved. The Mayor, under the City's seal and attested by the City Clerk, shall be and is hereby authorized and directed to execute and deliver the Loan Agreement and the related bond for and on behalf of the City, with such insertions, deletions and modifications, not inconsistent with this Ordinance, as the Mayor shall approve, such approval being conclusive of the approval of the Corporate Authorities without any further authorization than this Ordinance.

(ii) From and after the full execution and delivery of the Loan Agreement and the related bond, the appropriate officers, agents, attorneys and employees of the City are authorized to take all supplemental actions, including the execution and delivery of related supplemental agreements, certificates, documents and instruments not inconsistent with the Loan Agreement and the related bond, desirable or necessary to implement and otherwise give full effect to the Loan Agreement and the related bond.

(b) The principal element of the debt service obligation set forth in the Loan Agreement or related bond, which shall be up to but not in excess of \$6,413,451, shall mature in a time period as provided in the Loan Agreement, but not to exceed 20 years, and the unpaid principal thereof shall bear interest at an interest rate of not to exceed 1.85% per annum and shall have such other terms and provisions, all as provided in the Loan Agreement and otherwise under this Ordinance.

(c) The debt service obligations set forth in the Loan Agreement shall be subject to prepayment, as a whole or in part, at the option of the City, in the inverse order of their due date at any time at a price equal to the principal amount thereof to be prepaid and accrued interest to the date of prepayment, but subject to all conditions and provisions, if any, as set forth in the Loan Agreement and this Ordinance. The City may not prepay the debt service obligations under the Loan Agreement or any Parity Obligations until the 1997 IEPA Loan has been paid in full, except for any prepayment described in Section 8 hereof with excess proceeds of the Loan Agreement.

(d) No debt service obligation under or in respect of this Ordinance, subject to the Loan Agreement shall be deemed outstanding hereunder (i) which shall have matured and for which moneys are on deposit with proper paying agents, or are otherwise properly available, sufficient to pay all principal and interest thereof, or (ii) the provision for payment of which has been made by the City by the deposit in an irrevocable trust or escrow of funds or direct, full faith and credit obligations of the United States of America, the principal and interest of which will be sufficient to pay at maturity or as called for redemption or prepayment all the principal of and interest on such obligations.

(e) The Loan Agreement and the related bond hereunder may have such details, terms and provisions, including other than as specifically provided herein as shall be set forth in the Final Terms Certificate. For purposes hereof the term “**Final Terms Certificate**” means, as applicable to the Loan Agreement, a certificate signed by the Mayor, and attested by the City Clerk and under the seal of the City, setting forth and specifying details, terms and provisions of and related to the Loan Agreement and the related bond, including, but not limited to, aggregate principal amount, final interest rates, optional or mandatory call provisions, payment dates, the final maturity schedule, loan number, identification of fiscal agents and additional or supplemental security (including as to reserves and depreciation) and provisions as necessary or desirable to qualify under applicable federal laws, and the bond form shall be conformed to the Final Terms Certificate, if any.

Section 5. Debt Service. The debt service obligations under the Loan Agreement and related bond shall be payable in lawful money of the United States of America by check or draft of the City mailed to the holder thereof at the addresses of such holder as shown in the Loan Agreement.

The Loan Agreement shall be signed by the Mayor, sealed with the corporate seal of the City and, as applicable, attested by the City Clerk. The use of the facsimile signatures of such officers, and a facsimile of the official City seal of the City, are hereby authorized in lieu of manual signatures and a manual seal impression.

The debt service obligations of the Loan Agreement and the related bond shall be payable solely from revenues derived from the System as provided in this Ordinance, including increased user charges, but shall not, in any event, constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation. The net revenues derived from the System are hereby pledged by the City to the payment of the principal of and interest on the Loan Agreement and related bond.

Section 6. Revenue Bond Equivalent. To the extent required by applicable law, and otherwise to be given no effect, the obligations of the City under the Loan Agreement shall be deemed to constitute a revenue bond under Section 11-141-1 *et seq.* of the Illinois Municipal Code in substantially the form as attached hereto **Exhibit A**.

If the Loan Agreement is executed and delivered, whether or not fully disbursed with respect to the loan thereunder, the bond above shall be deemed issued, whether or not in fact signed, executed and delivered, this Ordinance to constitute the issuance thereof. The debt service obligations of the bond and the Loan Agreement constitute one and the same debt service obligation.

Section 7. Designation of Sewerage Fund. There are hereby created or ratified and ordered to be established and maintained in the treasury of the City the following separate funds and accounts to be known respectively as the:

- (a) Construction Account.
- (b) Sewerage Fund.
- (c) Operation and Maintenance Account.
- (d) Bond and Interest Account, which shall contain a Senior Debt Service Account, a Senior Reserve Account, a Junior Debt Service Account and a Junior Reserve Account (each with subaccounts for the respective obligations as set out in the governing documents thereto).

- (e) Depreciation Account.
- (f) Surplus Account.

The funds and accounts referred to in paragraphs (a) through (f) of this Section shall be maintained and administered by the City solely for the purposes and in the manner as provided in the Act, the 1997 IEPA Resolution and the Parity Ordinances.

Section 8. Deposit of Proceeds. The net proceeds received from the IEPA under the Loan Agreement shall be deposited in the Construction Account, which funds shall be kept separate and apart from all other funds of the City. Subject to the last paragraph of this section and any requirements of the Loan Agreement, such funds shall be held and used solely to acquire, construct and install the proposed Project as provided for by this Ordinance, and such funds shall be withdrawn from the Construction Account from time to time by the Treasurer of the City only upon submission of the following:

- (a) A duplicate of the order signed by the Mayor and City Clerk stating specifically the purpose for which the order is issued and indicating that the payment for which the order is issued has been approved by the Corporate Authorities; and
- (b) Each withdrawal of funds by the Treasurer for payment to a contractor or contractors for work done in connection with the Project shall also be accompanied by a certificate executed by the engineer in charge of the work stating the nature of the work completed and the amount due and payable thereon.

Within ninety (90) days after completion of the work in accordance with the plans and specifications therefor, hereinabove referred to in this Ordinance, and after all construction costs have been paid in connection therewith, the engineers shall certify to the Corporate Authorities the fact that the work described herein has been completed according to the plans and specifications therefor, and upon approval by the Corporate Authorities of the completion of the work based upon such engineer's certificate, and after all the costs have been paid, the Mayor, City Clerk and engineer shall execute a certificate and file it with the Treasurer certifying that the work has been completed in accordance with such plans and specifications, that all costs have been paid, and if at any time any funds remain in the Construction Account the same shall be transmitted to the Treasurer and deposited in the Junior Debt Service Account (EPA/SRL #L17-4844 Project), to be established in the manner set forth in Section 7 hereof and be used to redeem and/or prepay principal and/or interest on the bond and Loan Agreement issued under the terms of this Ordinance and any excess funds then remaining shall be held in such account to pay the principal of interest as the same mature and come due.

Subject to the Loan Agreement, the cost of engineering, legal and financing services, the cost of surveys, designs, soundings, borings, rights of way, inspection charges, and all other necessary and incidental expenses, including interest accruing on the obligations during the construction period to the extent such interest is not paid from income and revenue, shall be deemed items of cost of construction of the Project in accordance with the plans and specifications therefor heretofore approved by the Corporate Authorities and on file in the office of the City Clerk and referred to in the preambles hereof.

The Corporate Authorities hereby authorize acceptance of the offer of a loan through the Program, including all terms and conditions of the Loan Agreement as well as all special conditions contained therein and made a part thereof by reference. The Corporate Authorities further agree that the loan funds awarded shall be used solely for the purposes of the Project as approved by the IEPA in accordance with the terms and conditions of the Loan Agreement.

Subject to the Loan Agreement, funds may be transferred as needed from the Construction Account into the Bond and Interest Account, hereinabove described in Section 8 of this Ordinance to pay the interest accruing during the estimated time necessary to complete the acquisition, construction, extension and improvement of the System as described herein.

Section 9. Application of Moneys in Funds. The City covenants and agrees that it will on the first day of each month administer and allocate all of the moneys then held in the Sewerage Fund as follows:

(a) *Operation and Maintenance Account.* There shall first be paid and credited to the Operation and Maintenance Account an amount sufficient to pay the reasonable expenses of the operation, maintenance and repair of the System for the current month, including, but not limited to, salaries, wages, taxes, costs of materials and supplies, insurance, utilities, fuel, and reasonable repairs and extensions necessary to render efficient service (collectively, the “**Operation and Maintenance Expenses**”).

(b) *Senior Debt Service Account of the Bond and Interest Account.* There shall next be paid and credited monthly to the Senior Debt Service Account of the Bond and Interest Account the principal of and interest on the 1997 IEPA Loan becoming due the next succeeding payment date in such terms as described in the 1997 IEPA Resolution.

(c) *Senior Reserve Account of the Bond and Interest Account.* There shall next be paid and credited to the Senior Reserve Account of the Bond and Interest Account such amount or amounts at such times as may be required by the 1997 IEPA Resolution.

(d) *Junior Debt Service Account of the Bond and Interest Account.* There shall next be paid and credited monthly to the Junior Debt Service Account (EPA/SRL #L17-4844 Project) of the Bond and Interest Account so long as the Loan Agreement or related bonds remain outstanding and unpaid, an amount not less than 1/12 of the amount of principal and/or interest that will become due on the next succeeding principal and or interest payment date.

The amounts required to be paid and credited to the Junior Debt Service Account (EPA/SRL #L17-4844 Project) of the Bond and Interest Account pursuant to this Section shall be paid at the same time and on a parity with the amounts at the time required to be paid and credited to the bond and interest accounts established for the payment of principal of and interest on the Parity Obligations under the provisions of the Parity Ordinances.

All amounts paid and credited to the Junior Debt Service Account (EPA/SRL #L17-4844 Project) of the Bond and Interest Account shall be expended and used by the City for the sole purpose of paying the principal of and interest on the Loan Agreement and related bond as and when the same become due.

If at any time the moneys in the Sewerage Fund are insufficient to make in full the payments and credits at the time required to be made to the Senior Debt Service Account and the Junior Debt Service Account of the Bond and Interest Account for all of the outstanding obligations payable from the Sewerage Fund, all available moneys in the Sewerage Fund shall be allocated first in accordance with the provisions of the 1997 IEPA Resolution and then shall be divided among the Parity Obligations in proportion to the respective principal amounts at the time outstanding which are payable from the moneys on deposit in the Junior Debt Service Account of the Bond and Interest Account.

(e) *Junior Reserve Account of the Bond and Interest Account.* There shall next be paid and credited monthly to the Junior Reserve Account (EPA/SRL #L17-4844 Project) of the Bond and Interest

Account an amount equal to 1/24th of the Maximum Annual Debt Service related to the principal of and interest on the Loan Agreement or related bond until the amount on deposit in the Junior Reserve Account (EPA/SRL #L17-4844 Project) of the Bond and Interest Account aggregates the Maximum Annual Debt Service, as IEPA requires, and not otherwise. Such amount shall be in addition to any amounts deposited to the Senior Reserve Account of the Bond and Interest Account or deposited under the Parity Ordinances for the other Parity Obligations. Thereafter no additional funds shall be credited the Junior Reserve Account (EPA/SRL #L17-4844 Project) of the Bond and Interest Account, except that when any money is paid out and charged against the Junior Reserve Account (EPA/SRL #L17-4844 Project) of the Bond and Interest Account, credits shall be resumed at the foregoing monthly rate and continued until the aggregate amount required to be funded has been restored.

If at any time the moneys in the Sewerage Fund are insufficient to make in full the payments and credits at the time required to be made to the Senior Reserve Account or Junior Reserve Account of the Bond and Interest Account for all of the outstanding obligations payable from the Sewerage Fund, all available moneys in the Sewerage Fund shall be allocated first in accordance with the provisions of the 1997 IEPA Resolution and then shall be divided among the Parity Obligations in proportion to the respective principal amounts at the time outstanding which are payable from the moneys on deposit in the Junior Reserve Account of the Bond and Interest Account.

(f) *Depreciation Account.* After all payments and credits required at the time to be made under the provisions of paragraphs (a), (b) and (c) of this Section have been made, there shall next be paid and credited to the Depreciation Account an amount equal to 1/120 of 10% of the aggregate principal amount of all the outstanding obligations of the City payable from a pledge of the revenues in the Sewerage Fund until the balance of the Depreciation Account accumulates the total sum of 10% of the outstanding principal balance thereof.

Moneys in the Depreciation Account shall be expended and used by the City, first as described in the 1997 IEPA Resolution or the 1997 IEPA Loan, and second after meeting the requirements of the 1997 IEPA Resolution or if the 1997 IEPA Loan has been paid in full, for the purposes of (i) making emergency repairs and replacements in and to the System as may be necessary to keep the System in good repair and working order and to assure the continued effective and efficient operation thereof and (ii) paying the principal of or interest on any of the Parity Obligations at any time when there are no other funds available for that purpose in order to prevent a default. Whenever an amount is withdrawn from the Depreciation Account for the purpose stated in clause (ii) of the preceding sentence, the amount so transferred shall be added to the amount to be next and thereafter credited to the Depreciation Account until full reimbursement to the Depreciation Account has been made; and each expenditure to be made from the Depreciation Account for the purpose stated in clause (i) of the preceding sentence shall be made only after a consulting engineer employed for that purpose has certified that such expenditure is necessary to the continued effective and efficient operation of the System, provided, however, that in the event that emergency repairs are required in order to maintain the System, or a portion thereof, in operation, such engineer's certificate may be acquired after such expenditure has been made from the Depreciation Account.

The amounts required to be paid and credited to the Depreciation Account pursuant to this section shall be in addition to any amounts at the time required to be paid and credited to the Depreciation Account under the provisions of the 1997 IEPA Resolution, the Series 2014 Ordinance and any other parity ordinances.

(g) *Surplus Account.* After all payments and credits required at the time to be made under the provisions of paragraphs (a), (b), (c) and (d) of this Section have been made, all moneys remaining in the Sewerage Fund on the first day of each month shall be paid and credited to the Surplus Account.

Moneys in the Surplus Account may be expended and used for the following purposes as determined by the governing body of the City:

- (i) Paying the cost of the operation, maintenance and repair of the System to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Account under the provisions of paragraph (a) of this Section;
 - (ii) Paying the cost of extending, enlarging or improving the System;
 - (iii) Preventing default in, anticipating payments into or increasing the amounts in the Bond and Interest Account or the Depreciation Account referred to in paragraphs (b) and (d) of this Section, or establishing or increasing the amount of any debt service fund or debt service reserve fund created by the City for the payment of any Parity Bonds;
 - (iv) Calling, prepaying, redeeming and paying prior to maturity the 1997 IEPA Loan or the Parity Obligations, or, at the option of the City, purchasing in the open market at the best price obtainable, the 1997 IEPA Loan or any Parity Obligations, if applicable, including principal, interest and redemption premium, if any, with the 1997 IEPA Loan being prepaid first;
 - (v) Any other lawful purpose in connection with the operation of the System and benefiting the System; or
 - (vi) Any lawful purpose of the City.
- (h) *Deficiency of Payments into Funds or Accounts.* If at any time the revenues are insufficient to make any payment on the date or dates hereinbefore specified, the City will make good the amount of such deficiency by making additional payments or credits out of the first available revenues thereafter received from the operation of the System, such payments and credits being made and applied in the order hereinbefore specified in this Section.
- (i) *Definitions.* Certain definitions related to this Section 9 and otherwise herein are as follows:

“Gross Revenues” means all income from whatever source derived from the System, including (i) investment income; (ii) connection, permit and inspection fees and the like; and (iii) penalties and delinquency charges; but excluding expressly (A) non-recurring income from the sale of real estate; (B) governmental or other grants; (C) advances or grants made from the City; (D) capital development, reimbursement, or recovery charges and the like; and (E) annexation or pre-annexation charges; and as otherwise determined in accordance with generally accepted account principles for municipal enterprise funds.

“Maximum Annual Debt Service” means, in the context of use, an amount of money equal to the highest future principal and interest requirement of the referenced outstanding obligations required to be paid from System revenues in the referenced context in any fiscal year, including and subsequent to the fiscal year in which the computation is made. Any outstanding obligations required to be redeemed pursuant to mandatory redemption shall be treated as falling due on the date required to be redeemed (except in the case of failure to make any such mandatory redemption) and not on the stated maturity date of such outstanding obligations.

“Net Revenues” means Gross Revenues minus Operation and Maintenance Expenses.

Section 10. Compliance. That the City hereby covenants and agrees with the holder of the bond and of the Loan Agreement that so long as such obligations remain outstanding and unpaid, either as to principal or interest, that any holder of an obligation issued hereunder may, either in law or in equity, by suit, action, mandamus or other proceedings enforce or compel performance by the officials of the City of all duties required by law and by this Ordinance, including the making and collecting of sufficient rates for System services and segregating the revenues of the System and the application thereof to the respective accounts created by this Ordinance and in the time and manner and with the effect as herein provided, including in accordance with the 1997 IEPA Resolution and the Parity Ordinances.

Section 11. Additional Obligations. Subject to the Loan Agreement, the 1997 IEPA Resolution and the Parity Ordinances, the City covenants and agrees with the holder of the Loan Agreement and the related bond that the City will not issue any other or additional bonds or other evidences of debt service obligations of the City payable from or in any way creating a charge upon the income and revenue to be derived from the operation of the System on an equal parity with or superior to the bond and the Loan Agreement authorized hereunder, except as herein provided:

(a) The City reserves the right to issue additional obligations from time to time for the sole purpose of paying the cost of the completion of the acquisition, construction, extension and improving of the System to be made in accordance with the plans and specifications referred to in the preambles hereof for which the bond and the Loan Agreement are authorized hereunder, and any such additional bonds shall be secured ratably and equally by the revenues of the System with the obligations authorized by this Ordinance; provided, however, that the need of such financing shall be evidenced by a certificate of an independent consulting engineer in responsible charge of such construction, extension and improvement (i) giving a reasonably detailed description of the work remaining to be completed, an estimate of the cost thereof and the time of completion thereof and (ii) stating in reasonably itemized detail all expenditures made from the proceeds of the Loan Agreement and the bond authorized hereunder as to the amount and purpose; and provided, further, however, that while the State of Illinois acting through the IEPA is the holder of any of the obligations herein authorized, written approval of such financing shall be obtained from the IEPA and evidence of such approval placed on file with the City Clerk prior to the adoption of any proceedings authorizing the issuance of such additional obligations.

(b) The City further reserves the right to issue additional obligations for the acquisition and construction of further necessary improvements, extensions, repairs and rehabilitations to the properties comprising the System, such additional obligations to share ratably and equally in the revenues of the System with the revenue obligations herein authorized, only whenever all of the following conditions are met:

(i) The Net Revenues derived from the operation of the System for the completed fiscal year immediately preceding the date of the adoption of any ordinance authorizing the issuance of additional obligations shall have been equal to at least 110% of the average annual principal and interest requirements for all succeeding fiscal years on all the revenue obligations of the City payable from the revenues to be derived from the operation of the System then outstanding, including the obligations proposed to be issued, and

(ii) All the payments required to be made by the City into the Accounts set forth in Section 9 hereof, shall have been made up to and including the date of the adoption of any such ordinance authorizing the issuance of additional revenue obligations.

Such Net Revenues of the System may be adjusted as follows:

(A) In the event there shall have been an increase in the rates of the System from the rates in effect for the preceding fiscal year, which increase is in effect at the time of the issuance of any such parity obligations, the Net Revenues as described hereinabove may be adjusted to reflect the Net Revenues of the System for the immediately preceding fiscal year as they would have been had such then existing rates been in effect during all of such fiscal year.

(B) Any such adjustment shall be evidenced by the certificate of an independent consulting engineer or an independent certified public accountant employed for that purpose, which certificate shall be filed with and approved by the Corporate Authorities prior to the sale of the proposed parity obligations.

(c) In addition to the foregoing and notwithstanding the foregoing restrictions, additional parity obligations may be issued only upon the written approval of the IEPA if it shall then be the holder or insurer of all or any part of the bond or the Loan Agreement.

(d) The City may issue subordinate obligations payable solely out of the surplus as provided above in Section 9(e) or, as applicable, under the ordinances authorizing the outstanding obligations.

Section 12. General Covenants. Subject to the Loan Agreement, the 1997 IEPA Resolution and the Parity Ordinances, the City covenants and agrees with any holder of the Loan Agreement and the related bond that so long as the Loan Agreement or the related bond remains outstanding and unpaid, either as to principal or interest:

(a) The City will maintain the System and all improvements and extensions thereto in continuous, effective and efficient operation, will operate the same efficiently and faithfully and punctually perform all duties with respect thereto required by the Constitution and laws of the State of Illinois, the United States and this Ordinance.

(b) The City will establish and maintain at all times reasonable charges and rates for the use and service of the System, including by the City, and provide for the collection thereof, and the segregation and application of the revenues of the System in the manner provided by this Ordinance and sufficient at all times to pay the cost of operation and maintenance, to pay the interest of and principal on all revenue obligations of the City which by their terms are payable from the revenues of the System, and to provide for the continuation and maintenance of the respective Accounts as described in Section 7 of this Ordinance, and from time to time make all needful and proper replacements thereto so that it may at all times be operated properly, advantageously, continuously, effectively and efficiently, and when any equipment or facilities shall have been worn out, destroyed or otherwise become insufficient for proper use, it shall be promptly replaced or repaired so that the value and efficiency of the such system shall be at all times fully maintained, and there shall be charged against all users of the System, including the City, such rates and amounts for services of the System as shall be adequate to meet the requirements of this section. Compensation for services rendered to the City shall be charged against the City and payment for the same from the corporate funds shall be made monthly into the City's Sewerage Fund in the same manner as other revenues are required to be deposited.

(c) The City will establish such rules and regulations for the control and operation of the System necessary for the efficient, economical and continuous operation thereof, and rates and charges shall be fixed and revised from time to time as may be necessary to produce funds sufficient for all the

purposes herein provided until all of the obligations authorized by this Ordinance have been paid in full both as to principal and interest.

(d) The City will maintain and keep proper books of records and accounts (separate from all other records and accounts of the City) in which complete entries shall be made of all transactions relating to the System, and hereby covenants that it will cause the books and accounts of the System to be audited by certified public accountants and within not more than ninety (90) days after the close of each annual fiscal period upon request will file with the IEPA, and otherwise as required by the Loan Agreement and applicable law, upon request, complete operating income statements of the System in reasonable detail covering such annual period and will permit any holder of the Loan Agreement or related bond or other obligation then outstanding to inspect at all reasonable times the System and all records and accounts and data relating thereto, and to furnish to the appropriate agency of the State of Illinois, if the Loan Agreement or related bond herein authorized may be held by the State of Illinois or any agency of the State of Illinois, all data and information relating to such System which may be reasonably requested. Each audit, in addition to whatever matters may be thought proper by the accountant to be included therein, or shall be required by the Loan Agreement, shall without limiting the generality of the foregoing, include the following:

(i) A statement in detail of the income and revenue and expenditures of the System for such fiscal year.

(ii) The accountant's comments regarding the method in which the City has carried out the requirements of this Ordinance and the Loan Agreement, and the accountant's recommendations for any changes or improvements in the financial operation of the System.

(iii) A list of all the insurance policies in force at the end of the fiscal period, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer and the expiration date of the policy.

(iv) Information concerning the number of customers served by the System at the end of the fiscal period, and the totals and quantities or otherwise handled (i.e., collected or distributed) and treated by the System.

All expenses incurred in the making of such audit shall be regarded and paid as an Operation and Maintenance Expense.

(e) The City will not sell, lease, loan, mortgage or in any manner dispose of or encumber the System or any improvements and extensions thereto, except in the ordinary course of business or for the issuance of additional obligations as provided for in Section 11 of this Ordinance, until all of the obligations hereby authorized shall be paid in full, both principal and interest, or unless and until provision shall have been made for the payment thereof, and that the City will take no action in relation to the System which would unfavorably affect the security of the outstanding obligations or of the obligations herein authorized or the prompt payment of the principal thereof and interest thereon.

(f) To the extent available at reasonable cost, and not inconsistent with the Loan Agreement, the City will carry and maintain insurance upon all of the properties forming a part of the System which may be of an insurable nature, such insurance to be of the type and kind and for such amount or amounts which are usually carried by other municipalities, special districts, private companies or operators of similar properties rendering services of a similar character in similar communities, and all moneys received for losses under such insurance policies shall be deposited in a separate subaccount of the Operation and Maintenance Account and used only in making good the loss or damage in respect of

which they were paid either by repairing the property damaged or making replacements to the property destroyed. Provision for making good such loss or damage shall be made within ninety (90) days from date of the loss or damage or for the payment of the principal of and interest on the obligations authorized to be issued under the terms of this Ordinance and including the principal and interest on debt service obligations hereafter issued and on a parity with the debt service obligations herein authorized. Similarly, the City will also carry and maintain general liability coverage for any loss and shall cover all employees under worker's compensation as required by Illinois law. The payment of premiums for all insurance policies required under the provisions of this covenant shall be considered a maintenance and operation expense. The proceeds derived from any and all policies for general liability shall be paid into the Operation and Maintenance Account and used in paying the claims on account of which they were received.

(g) The City will require its Treasurer and other officers and employers having access to funds of the City to execute a fidelity bond in an amount not less than required by the Loan Agreement or applicable law, with a responsible surety company.

(h) The City, prior to the beginning of each fiscal year for the System while the obligations hereunder are outstanding, will prepare a proposed budget, or appropriation ordinance, in compliance with applicable law for its ensuing fiscal year covering the operation of the System, its anticipated revenues and operation and maintenance expenses and the payments to be made into the various funds as provided in this Ordinance during such fiscal year, and the City covenants that a copy of such budget or appropriation ordinance upon request will be forwarded promptly to the IEPA.

Section 13. Contract. The provisions of this Ordinance shall be subject and subordinate to the 1997 IEPA Loan, and in that case the Loan Agreement and related bond shall be payable solely and only from the surplus revenues while the 1997 IEPA Loan is outstanding and unpaid, and shall constitute a contract between the City and the holders of the obligations hereby authorized to be issued and after the issuance thereof, no changes, additions or alterations of any kind shall be made herein, except as herein provided, until such time as all of the obligations issued hereunder and the interest thereon shall be paid in full, or unless and until provision shall have been made for the payment of all such obligations and interest thereon in full. This obligation under this Ordinance may from time to time be modified or amended by a supplemental ordinance duly adopted by the Corporate Authorities with written consent of the holders of not less than a majority of the principal amount of all obligations authorized by this Ordinance and all obligations hereafter issued on a parity therewith then outstanding (excluding any of the obligations owned by or under the control of the City), and by the State of Illinois, acting through the IEPA, or its successor agency, if it shall then be the holder or insurer of the principal and interest of any of such outstanding obligations; and provided, however, that no such modification or amendment shall extend or change the due date or maturity of, or date of redemption or prepayment prior to maturity, or reduce the interest rate on, or otherwise alter or impair the obligation of the City to pay the principal of and interest on any debt service obligations herein authorized at the time, place and at the rate and in the currency provided therein of any obligation herein authorized then outstanding, without the express consent of the holders of all such obligations, nor shall any such modification or amendment permit the creation of a preference or priority of any obligation or obligations over any other obligation or obligations, nor reduce the percentages of the holders of outstanding obligations required for the written consent of such modification or amendment. Each such consent must be accompanied by proof of ownership of the obligations for which consent is given, which proof must be in a form approved by the Corporate Authorities; and each such consent and proof of ownership must be on file with the City Clerk prior to the adoption of such modifying or amendatory ordinance.

Section 14. Further Authorization. The Mayor, City Clerk, Treasurer and the other officials of the City are hereby authorized, empowered and directed to do all such acts and things and to execute,

acknowledge and deliver all such documents (including, without limiting the generality of the foregoing, any agreement requested by the IEPA, any closing certificate, non-arbitrage certificate or tax compliance agreement in connection with the Loan Agreement and the related bond) as may in his, her or their discretion be deemed necessary or desirable in order to carry out or comply with the terms and provisions of this Ordinance and the Loan Agreement, and all of the acts and undertakings of such officials which are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done shall be and the same are hereby in all respects, ratified, confirmed and approved. Appropriate completion of the Loan Agreement by the Mayor prior to execution and delivery is hereby expressly authorized and approved, not inconsistent with the terms and provisions of this Ordinance.

Section 15. Invalidity. That if any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. To the extent that any provision of this Ordinance is inconsistent with the Loan Agreement, the Loan Agreement shall be controlling.

Section 16. Effective. This Ordinance shall become effective immediately after its adoption and approval.

[Remainder of page intentionally blank.]

Upon motion by Commissioner _____, seconded by Commissioner _____, adopted this 28th day of October, 2015, by a roll call vote, as follows:

AYES (Names): _____
NAYS (Names): _____
ABSENT (Names): _____

Approved this 28th day of October, 2015.

Tim Gover, Mayor
City of Mattoon, Coles County, Illinois

ATTEST:

APPROVED AS TO FORM:

Susan J. O'Brien, City Clerk

Janett Winter-Black, City Attorney

Recorded in the City's Records on October 28, 2015.

**EXHIBIT A
TO ORDINANCE**

(FORM OF BOND)

**UNITED STATES OF AMERICA
STATE OF ILLINOIS
COUNTY OF COLES
CITY OF MATTOON**

**[NON-NEGOTIABLE]
SEWERAGE SYSTEM REVENUE BOND
(IEPA WATER POLLUTION CONTROL REVOLVING LOAN PROGRAM)
SERIES 2015**

Stated Principal Amount: \$ _____

Registered Owner: _____

KNOW ALL BY THESE PRESENTS, that in connection with and related to that certain Loan Agreement (Project L17-4844) (the “**Loan Agreement**”) by and between the **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** (the “**IEPA**”) and the **CITY OF MATTOON, COLES COUNTY, ILLINOIS** (the “**City**”), the City, for value from time to time received, under and pursuant to the IEPA Water Pollution Control Revolving Loan Program (the “**Program**”), hereby promises to pay to the Registered Owner hereof as hereinafter provided, solely from the City’s Sewerage Fund (the “**Fund**”), subordinate to certain outstanding and prior pledges of the revenues of the City’s sewerage system as hereinafter mentioned (the “**System**”), as provided in the ordinance authorizing this bond, and not otherwise, the principal and interest due in connection with the Loan Agreement and the Program, at the time, in the manner and with the effect set forth in the Loan Agreement, by check or draft of the City mailed to the IEPA, in lawful money of the United States of America at the address of the IEPA as required by the Loan Agreement, or in such medium, at such other place or in such manner set forth in the Loan Agreement. This bond incorporates by reference each term and provision of the Loan Agreement and the authorizing ordinance therefor, the intent hereof being that this bond is essentially to be given effect as the Loan Agreement.

This bond, together with such additional parity obligations as may hereinafter be issued under the provisions of the ordinance authorizing this bond is payable solely from revenues derived from the operation of the System, subordinate to certain outstanding and prior pledges of the revenues of the System, as provided in the ordinance authorizing this bond, and not otherwise, and is issued under authority of the provisions of Division 141 of Article 11 of the Illinois Municipal Code, as from time to time supplemented and amended, including by Intergovernmental Cooperation Act, Section 10 of Article VII of the Constitution of Illinois and applicable Illinois and federal laws in connection with the IEPA’s Water Pollution Control Revolving Loan Program (collectively, the “**Act**”), and an authorizing ordinance duly adopted by the City Council of the City on the 28th day of October, 2015 (as supplemented and amended, the “**Ordinance**”), for the purpose of paying all or a part of the costs of acquiring, constructing, extending and improving System facilities in and for the City as set forth in the Ordinance (the “**Project**”), and this bond and the related Loan Agreement does not and shall not in any event constitute an indebtedness of the City within any constitutional or statutory provision or limitation, and under no circumstances shall this bond be or become an indebtedness or an obligation of the City payable from taxes or other than from the special and limited source herein specifically mentioned.

This bond is junior and subordinate with respect to the payment of principal and interest from the revenues of the System and in all other respects with the City's IEPA Loan L17-1187 approved by Resolution No. 97-2034 on August 19, 1997. This bond is on a parity with respect to the payment of principal and interest from the revenues of the System and in all other respects with the City's General Obligation Refunding Bonds (Alternate Revenue Source), Series 2014 authorized by Ordinance No. 2014-5368 on May 20, 2014. The City in the Ordinance has reserved the right to issue other sewerage revenue bonds having a lien on revenues of the System on a parity with this bond and the related Loan Agreement. It is hereby expressly declared that this bond constitutes a lien upon the revenues of the System, dedicated and pledged pursuant to the Ordinance for the purposes of paying the principal hereof, premium, if any, and interest hereon and other amounts as herein and in the Loan Agreement set forth. For a more complete statement of the source of payment of this bond, the principal of and interest on the Loan Agreement, the circumstances under which additional obligations may be issued on a parity therewith, the priority of the lien on the revenues of the System and a statement of the rights, duties and obligations of the City and the rights of the IEPA, and the pledge of the revenues from the System to the payment thereof and of the outstanding obligations, reference is made to the Ordinance.

This bond is not of a type offered to the public and shall not be required to be (but may be) fully registered as to principal and interest.

Under the provisions of the Ordinance, the entire revenues derived from the operation of the System shall be deposited in the Fund, which shall be used only for the purpose of and is hereby pledged for the purpose of paying the cost of operating and maintaining the System, providing adequate depreciation and reserve funds and paying the principal of and interest on and certain other amounts due in respect of the outstanding obligations and the debt service obligations represented by the Loan Agreement and this bond, according to the Ordinance, payable by their terms only from the revenues of the System, and which are issued by the City under the provisions of applicable law, and in making all payments required to maintain the several special accounts established and created under the terms of the authorizing ordinances for the outstanding obligations and of the Ordinance heretofore adopted and pursuant to which this bond is issued and the Loan Agreement is authorized.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the execution and delivery of the Loan Agreement, have been done, have happened and have been performed in regular and due form of law and that provision has been made for depositing in the Fund the entire revenues received from the operation of the System to be applied in the manner as hereinabove set forth, and the City hereby covenants and agrees that it will fix and maintain rates for the use and service of the System and collect and account for revenues from the System sufficient at all times to pay the cost of maintenance and operation of the System, to provide adequate depreciation and reserve funds, to pay promptly the principal of and interest on all bonds and other obligations issued by the City, including this bond, the Loan Agreement and the outstanding obligations, which by their terms and priorities are payable solely from the revenues of the System, and to comply with all the covenants of and to maintain the several accounts created and established by the Ordinance pursuant to which this bond is issued and by the ordinances related to the outstanding obligations while any outstanding obligations are outstanding and unpaid. The rights and obligations of the City and the holder of this bond and the Loan Agreement may be modified or amended only and upon the terms provided in the ordinances related to the outstanding obligations, the Ordinance and in the Loan Agreement; provided, that no such modification or amendment shall extend or change the maturity or due date of prepayment, or reduce the interest rate on or otherwise alter or impair the obligation of the City to pay the principal or interest represented by this bond and the Loan Agreement at the time and place and at the rate and in the currency provided therein of any such obligation without the express consent of the holder, nor permit the creation by the City of any preference or priority of any revenue obligation and including any obligations which may hereafter be issued and be on a parity or with the Loan Agreement

herewith, nor reduce the percentage of such outstanding revenue obligations required for the affirmative vote or written consent to an amendment or modification, all as more fully set forth in the Ordinance.

The debt service obligations hereunder and under the Loan Agreement are and constitute the same obligation.

IN WITNESS WHEREOF, the City of Mattoon, Coles County, Illinois, by its City Council, has caused this bond to be signed by its Mayor, its corporate seal to be hereto affixed and attested by the City Clerk, and this bond to be dated and effective as of the same date as the Loan Agreement.

(SEAL)

**CITY OF MATTOON,
COLES COUNTY, ILLINOIS**

/s/ _____
Mayor, City of Mattoon,
Coles County, Illinois

Attest:

/s/ _____
City Clerk, City of Mattoon,
Coles County, Illinois

