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**Agenda Item Number**

# CITY COUNCIL AGENDA ITEM COVER MEMO

**FOR AGENDA OF COUNCIL MEETING/WORK SESSION - DATE:** July 23, 2015

**ACTION REQUESTED BY:** Huntsville Utilities

**COUNCILMEMBER: ALL** **DISTRICT: ALL**

**SUBJECT MATTER:** Water Bond Ordinance

**EXACT WORDING FOR AGENDA:** Introduction & Adoption of an ordinance authorizing the issuance of Water Revenue Warrants, Series 2015 for the construction of the Southeast Water Treatment Plant. (Utilities: Water)

**ORDINANCE:** X **RESOLUTION:** **MOTION:**

**(IF AMENDMENT, STATE TITLE AND NUMBER OF ORIGINAL):** N/A

**ITEM IS TO BE CONSIDERED FOR:**

**INTRODUCTION:** **ACTION:** X **DISCUSSION:**

**UNANIMOUS CONSENT REQUIRED? Yes**

**BRIEFLY STATE WHY THE ACTION IS REQUESTED; WHY IT IS RECOMMENDED OR NOT RECOMMENDED; WHAT COUNCIL ACTION WILL PROVIDE, ALLOW, OR ACCOMPLISH; ANY ASSOCIATED COST; BUDGETED (?); AND ANY OTHER INFORMATION THAT YOU THINK MIGHT BE HELPFUL.** Approval of this ordinance allows Bond Counsel to immediately take all action necessary or desirable to cause the issuance of the Series 2015 warrants, and the application of the proceeds thereof to the acquisition and construction of the Southeast Water Treatment Plant.

**MAYOR RECOMMENDS OR CONCURS? YES** _____ **NO** _____ **N/A** _____

**SIGNATURE:** **Jay C. Stowe, President & CEO** **DATE:** July 23, 2015

**ORDINANCE NO. 15 - _____**

**AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF $92,810,000 AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE WARRANTS, SERIES 2015 DATED AUGUST 4, 2015, OF THE CITY OF HUNTSVILLE, ALABAMA**

**BE IT ORDAINED** by the City Council (herein called the "Council") of the City of Huntsville (herein called the "City") in the State of Alabama as follows:

**Section 1. Findings.** The Council has determined and hereby finds and declares that the following facts are true and correct:

(a) The City has heretofore executed and delivered to The Bank of New York Mellon Trust Company, N.A. (herein called the "Trustee"), a Trust Indenture dated as of May 1, 2008 (herein called the "2008 Indenture"), under and pursuant to which the City has issued its Water Revenue Warrants, Series 2008, dated May 1, 2008 (herein called the "Series 2008 Warrants"), which are presently outstanding in the aggregate principal amount of $29,605,000.

(b) Under the provisions of Article 7 of the 2008 Indenture, the City reserved the right to issue additional warrants (herein called "Additional Warrants") to be secured by the 2008 Indenture, as at any time supplemented, by a pledge of the net revenues derived from operation of the City's water works plant and distribution system (herein called the "System"), on a parity with the Series 2008 Warrants, upon compliance with the conditions set out in said Article 7. The City has heretofore not issued any Additional Warrants pursuant to said reservation.

(c) No Event of Default (as defined in the 2008 Indenture) exists under the 2008 Indenture.

(d) It is necessary, desirable and in the public interest that the City pay the costs of various capital improvements to the System, including, without limitation, construction and equipping of a new water treatment plant and related improvements (herein called the "2015 Improvements").

(e) It is necessary, desirable and in the public interest that the City issue the Series 2015

Warrants hereinafter authorized to pay the costs of the 2015 Improvements and to pay the costs of issuing the said Series 2015 Warrants.

**Section 2. Authorization of Series 2015 Warrants.** There are hereby authorized to be issued by the City $92,810,000 aggregate principal amount of Water Revenue Warrants, Series 2015, dated August 4, 2015 (herein called the "Series 2015 Warrants"), all under the terms, conditions and provisions set out in the 2008 Indenture, as supplemented and amended by the First Supplemental Indenture provided for in Section 4 of this ordinance. All the provisions of the 2008 Indenture, as so supplemented and amended (herein called the "Indenture"), are hereby adopted as a part of this ordinance.

**Section 3. Source of Payment of the Series 2015 Warrants; Special Finding.** (a) The principal of and the interest on the Series 2015 Warrants shall be payable solely from the revenues derived from operation of the System (as it may at any time be constituted) remaining after payment of the reasonable and necessary expenses of efficiently and economically administering and operating the System and maintaining it in good repair and operating condition (herein called the "Net System Revenues"). Neither the Series 2015 Warrants nor any of the agreements herein contained shall ever constitute an indebtedness of the City, within the meaning of any constitutional or statutory provision or limitation. The general faith and credit of the City are not pledged to payment of the Series 2015 Warrants, and the Series 2015 Warrants shall not be general obligations of the City. None of the agreements, representations or warranties made or implied in this ordinance or in the issuance of the Series 2015 Warrants shall ever impose any personal or pecuniary liability or charge upon the City, whether before or after any breach by the City of any such agreement, representation or warranty, except with the revenues from the said system. Nothing contained in this section shall, however, relieve the City from the performance of the several covenants and representations on its part herein contained.

(b) The City hereby specifically finds and determines that the Net System Revenues will, immediately following issuance of the Series 2015 Warrants, be sufficient to make timely payment of all principal and interest on the Series 2015 Warrants, the Series 2008 Warrants and the Subordinated Water Revenue Warrant, Series 2013-DWSRF-DL, dated February 15, 2013.

**Section 4. Authorization of First Supplemental Indenture.** The Council does hereby authorize and direct the Mayor of the City to execute and deliver, for and in the name and behalf of the City, to the Trustee, a First Supplemental Indenture to be dated August 5, 2015 (herein called the "First Supplemental Indenture"), in substantially the form presented to the meeting at which this ordinance is adopted (which form shall be attached as Exhibit I to the minutes of the meeting at which this ordinance is adopted and is hereby adopted in

all respects as if set out in full herein) and does hereby authorize and direct the City Clerk of the City to impress on the First Supplemental Indenture the corporate seal of the City and to attest the same.

**Section 5. Confirmation of Sale of the Series 2015 Warrants.** The Mayor is herby authorized to execute and deliver, for and in the name of and on behalf of the City, a Purchase Contract dated July 23, 2015, between the City and the Underwriters named therein (herein together called the "Underwriters"), a copy of which is attached to the minutes of the meeting at which this ordinance is adopted as Exhibit II (which is hereby made a part of this ordinance to the same extent as if set out in full herein), which contract provides for the sale of the Series 2015 Warrants to the Underwriters. The sale price of the Series 2015 Warrants, as set forth in said Purchase Contract, is $105,276,023.04, which price reflects the initial par amount of the Series 2015 Warrants, less an underwriting discount of $144,034.86, and plus net original issue premium of $12,610,057.90.

**Section 6. Authorization of the Preliminary and Final Official Statements.** The City hereby approves and adopts the Preliminary Official Statement dated July 16, 2015, respecting the Series 2015 Warrants (herein called the "Preliminary Official Statement"), a copy of which is attached to the minutes of the meeting at which this ordinance is adopted as Exhibit III (which is hereby made a part of this ordinance to the same extent as if set out in full herein). The actions of the City in causing the Preliminary Official Statement to be "deemed final" as of its dated date for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission are hereby ratified and affirmed in all respects. The action of the Underwriters in causing the Preliminary Official Statement to be distributed on the part of the City is hereby ratified and approved. The Mayor of the City is hereby authorized and directed to execute a final Official Statement of the City with respect to the Series 2015 Warrants, in substantially the form of Exhibit V hereto, with such revisions as may be necessary to reflect the final terms of sale of the Series 2015 Warrants and such other changes as shall be approved by the Mayor. The Mayor is hereby authorized and directed to cause the said final Official Statement to be delivered to the purchasers of the Series 2015 Warrants.

**Section 7. Authorization of Continuing Disclosure Agreement.** The Mayor of the City is hereby authorized and directed to sign, for and in the name and behalf of the City, a Continuing Disclosure Agreement dated the date of the Series 2015 Warrants (herein called the "Continuing Disclosure Agreement"), in substantially the form presented to the meeting at which this ordinance is adopted (which form shall be attached as Exhibit IV to the minutes of the meeting at which this ordinance is adopted and is hereby adopted in all respects as if set out in full herein), with such changes as the said Mayor shall approve, and the Council does

hereby authorize and direct the City Clerk of the City to impress on the Continuing Disclosure Agreement the corporate seal of the City and to attest the same.

**Section 8. Execution and Delivery of Series 2015 Warrants and First Supplemental Indenture.** The Mayor of the City is hereby directed to cause each of the Series 2015 Warrants to be signed in the name and behalf of the City by the signature of the said Mayor, the City Clerk of the City is hereby directed to cause the corporate seal of the City to be impressed on each of the Series 2015 Warrants, and to attest the said seal and each of the Series 2015 Warrants by his signature on each of the Series 2015 Warrants, and the City Treasurer is hereby directed to register the Series 2015 Warrants as claims against the City to the extent specified in the Supplemental Indenture, all in the manner contemplated by the First Supplemental Indenture; and the said Mayor is hereby directed thereupon to deliver the First Supplemental Indenture and the Series 2015 Warrants to the Trustee, and to direct the Trustee to execute the First Supplemental Indenture and to authenticate and deliver the Series 2015 Warrants to the Underwriters, upon payment to the City of the purchase price set forth hereinabove.

**Section 9. Application of Proceeds of Series 2015 Warrants.** The entire proceeds derived by the City from the sale of the Warrants shall be paid to the Trustee and applied in accordance with the provisions of Section 2.5 of the First Supplemental Indenture.

**Section 10. General Authorization.** The Mayor, the City Clerk and the City Treasurer of the City, or any of them, are each hereby authorized and directed to execute, attest and deliver such other documents, agreements, instruments or certificates necessary or desirable in order to consummate the issuance and delivery of the Series 2015 Warrants and to carryout fully the transactions contemplated by this ordinance.

**Section 11. Severability Provisions.** The various provisions of this ordinance are hereby declared to be severable. In the event any provision hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this ordinance.

**Section 12. This Ordinance a Contract.** The provisions of this ordinance shall constitute a contract between the City and each holder of the Series 2015 Warrants issued hereunder. Whenever all the Series 2015 Warrants shall have been paid in full or provision for payment thereof made as provided in the Indenture, and all the agreements on the part of the City herein and therein contained with respect thereto shall have been performed, then upon the happening of such events the obligations of the City hereunder shall thereupon cease.

ADOPTED this 23rd day of July, 2015.

President of the City Council
City of Huntsville, Alabama

APPROVED this 23rd day of July, 2015.

Mayor
City of Huntsville, Alabama