

**CITY OF ELBA
ORDINANCE 06232020**

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF AN INTEREST BEARING TEMPORARY SEWER REVENUE ANTICIPATION BOND OF THE CITY OF ELBA IN THE PRINCIPAL AMOUNT OF NOT MORE THAN \$2,795,000

BE IT ORDAINED BY THE TOWN COUNCIL (herein called the "Governing Body") OF THE CITY OF ELBA (herein called the "City") as follows:

Section 1. The Governing Body does hereby find and determine, warrant and represent as follows:

(a) The Governing Body has determined to acquire and construct improvements to its sanitary sewer system for the purpose of supplying service to users in the City and surrounding territory, and to that end the Governing Body has obtained a fund reservation from the Department of Agriculture, United States of America (herein called "USDA"), for the purchase by USDA and sale by the City of its Sewer Revenue Bond, Series 2021 (herein called the "Permanent Bonds") to pay the cost of acquiring and constructing the said improvements under the provisions of Sections 11-81-160 et seq. of Title 11 of the CODE OF ALABAMA 1975.

(b) The City has received bids for the construction of the improvements and the best bid received is within the budget for the project. Immediate construction is necessary to promote the economic feasibility of the proposed project.

(c) Some time will be required to complete the sale and delivery of the Permanent Bonds, and it is necessary now to make provision for payment of the costs of construction as work progresses under the construction contract. Temporary or interim financing as hereinafter provided is necessary for and is in the best interest of the City.

Section 2. For the purpose of providing funds for temporary use and in anticipation of the sale and issuance of the Permanent Bonds, to pay the cost of construction of the said improvements, the City shall sell and deliver to Troy Bank & Trust (the "Lender") its Temporary Sewer Revenue Anticipation Bond (herein called the "Bond") in the principal amount of not more than \$2,795,000, bearing interest from the date of each advance at a per annum rate equal to 3.25%, payable at maturity. The Bond shall be payable as to both the principal advanced thereon and interest eighteen months from the date of the closing thereof, subject, however, to optional prior redemption by the City as provided in the form of Bond hereinafter authorized, and shall be payable as to both principal and interest at the designated office of the said Lender in Elba, Alabama. The Bond shall be dated as of the date of the sale and delivery thereof. The principal of and interest on the Bond shall be payable solely out of the net revenues derived from the operation of the sanitary sewer system of the City as at any time constituted (herein called the "System") subject and subordinate to the prior pledge thereof in favor of the City's Sewer Revenue Bond dated October 27, 2000, currently owned and held by the U.S. Department of Agriculture (the "Prior Lien Bond") of from the proceeds of the

Permanent Bonds, and the City hereby covenants and agrees to have available adequate funds from the said revenues or proceeds at said office for such purposes, when the Bond matures and comes due.

Section 3. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF ALABAMA

CITY OF ELBA, ALABAMA
TEMPORARY SEWER REVENUE ANTICIPATION BOND

NOT MORE THAN
\$2,795,000

The CITY OF ELBA, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (herein called the "City") for value received, hereby promises to pay to the order of Troy Bank & Trust (the "Payee"), but solely out of the revenues or bond proceeds hereinafter described, the aggregate of the principal sums advanced hereon, as shown on the schedule attached hereto and made a part hereof by this reference, but not more than

TWO MILLION SEVEN HUNDRED NINETY-FIVE THOUSAND DOLLARS AND NO
100s
(\$2,795,000)

eighteen months from the date hereof (the "Maturity Date"), together with interest on the principal advanced hereon from the date of each such advance at a per annum rate equal to 3.25% payable at Maturity. Both the principal advanced and interest on this Bond are payable in lawful money of the United States of America, at the principal office of the Payee in Elba, Alabama, at par and without discount, exchange, deduction or charge therefor.

The City reserves the right to prepay this Bond at any time before maturity, at its option, by the payment of the principal advanced hereon plus accrued interest thereon to the date of such prepayment, and without prepayment penalty.

This Bond is all of a duly authorized issue by the City pursuant to the Constitution and laws of the State of Alabama, and an ordinance and proceedings of the governing body of the City duly held, passed and conducted, for the lawful purpose of providing funds to pay the cost of constructing improvements to a sanitary system (herein, as at any time constituted, called the "System"), under Section 11-81-165 of Title 11 of the CODE OF ALABAMA 1975.

The principal of and interest on the Bond are payable solely out of the net revenues derived from the operation of the System subject and subordinate to the prior pledge thereof in favor of the City's Sewer Revenue Bond, dated October 27, 2000, currently owned and held by

the U.S. Department of Agriculture (the "Prior Lien Bond"), or the proceeds derived from the sale of the \$2,795,000 Sewer Revenue Bonds, Series 2019, of the City, in anticipation of the sale and issuance of which this Bond is issued. Interest accruing on this Bond will be paid only on presentation and surrender of the Bond.

This Bond and the interest hereon do not constitute a charge on the general credit or revenues of the City, but are payable solely out of revenues subject and subordinate to the Prior Lien Bond as aforesaid. This Bond and the interest hereon do not constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation. The general faith and credit of the City are not pledged to the payment of the principal of or interest on this Bond.


It is hereby recited, certified and declared that the obligation evidenced by this Bond will be lawfully due, without condition, abatement or offset of any description, and that all conditions, acts and things required by the Constitution and laws of the State of Alabama to happen, exist or be performed precedent to or in the issuance of this Bond and the adoption of the ordinance authorizing its issuance have happened, do exist and have been performed as so required.

IN WITNESS WHEREOF, the City, acting by and through its governing body, has caused this Bond to be executed in its name and on its behalf by its Mayor and its Treasurer and to be attested by its Clerk, and has caused this Bond to be dated _____, 2020.

CITY OF ELBA, ALABAMA

By 
Its Mayor

By 
Its Treasurer

Attest: 
Clerk

SCHEDULE OF ADVANCES

<u>Date</u>	<u>Amount Advanced</u>	<u>Aggregate Amount Advanced (Not More Than \$2,795,000)</u>	<u>Signature of USDA Officer</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Section 4. The Bond shall be executed in the name and on behalf of the City by the Mayor and the Treasurer of the City and attested by the Clerk. The Bond shall be sold and delivered when funds are needed for the aforesaid construction. The said officers are hereby authorized and directed to date, execute and attest the Bond.

Section 5. The Bond, duly executed as aforesaid, shall be sold and delivered at private sale to the Lender upon payment to the City of the first advance against the face amount thereof. The Mayor, the Clerk and Treasurer of the City, or any of them, are hereby authorized and directed to effect such delivery when funds are required for the acquisition and construction of the said improvements, and in connection therewith, to deliver such closing papers containing such representations as are required to demonstrate the legality of the Bond, the validity of the pledge to the payment thereof, the absence of any pending or threatened litigation with respect thereto, and the exemption of the interest thereon from Federal income taxes. The said Treasurer shall give a receipt to said purchaser for the initial advance on the Bond. Subsequent advances on the Bond shall be made whenever the Mayor or the Clerk shall determine that moneys are needed for the said improvements. The date of each such advance, the amount thereof and the cumulative total thereof shall be noted on the Bond by an officer of the Lender under his signature. No advances shall be made except pursuant to an invoice approved by the City and a representative of USDA. The proceeds from the advances on the Bond shall be held in trust by the said Treasurer and disposed of only for the purpose for which the Bond is issued. Such proceeds shall be deposited in a construction escrow account to be maintained with Lender in Elba, Alabama, and disbursed on approval of the City by its authorized representative to pay invoices approved by the City and a representative of USDA. The Mayor and the Clerk are

hereby authorized and directed to open said construction escrow account with Troy Bank & Trust of Elba, Alabama into which advances of proceeds from the Bond will be deposited and used to construct the project.

Section 6. The Bond and interest thereon are payable solely out of the net revenues derived from the operation of the System (subject and subordinate to the prior pledge thereof in favor of the Prior Lien Bond) and from the proceeds of the Permanent Bonds, remaining after payment of the reasonable and necessary costs of owning and operating the System. The Bond and the interest thereon shall not constitute a debt of the City, but are limited obligations in accordance with the terms of this ordinance.

Section 7. [Reserved]

Section 8. Until the principal of and interest on the Bond shall have been paid in full, or provision shall have been made for such payment, the City hereby covenants and agrees as follows:

(a) It shall not mortgage the System or pledge or encumber the income or revenues therefrom, except for the benefit of the Permanent Bonds, unless such mortgage and pledge are made secondary and subordinate in all respects to the pledge herein made for the benefit of the Bond.

(b) It shall fix and maintain such reasonable rates and charges for the sewer service supplied or furnished by the System, and make such collections from the users thereof as to produce revenues sufficient to pay all expenses reasonably necessary for the reasonable and proper operation, administration, maintenance and repair of the System, and to provide for the payment of the principal of and interest on the Bond on the due date thereof.

(c) It will exercise its best efforts to effect the issuance, sale and delivery of the Permanent Bonds, and will comply with all provisions of its said agreement with USDA.

(d) It shall at all times operate the System in an economical and efficient manner and will maintain the System in first-class operating condition and will make such ordinary improvements, replacements and repairs from time to time as are necessary to keep the System in first-class operating condition.

(e) It shall not sell, lease or convey all or any substantial portion of the System (other than such parts as may become obsolete, worn out or unsuitable for use as a part of the System).

(f) It shall not furnish or permit to be furnished from the System any free service, and it shall charge and collect for all services supplied or furnished from or by the System at established rates.

(g) Upon failure of any user to pay for service rendered within sixty (60) days, the City shall shut off the connection of such user to the System, and shall not furnish him or permit him to receive from the System further services until all obligations owed by him to the City on account of all services shall have been paid in full. This covenant shall not, however, prevent the City from causing any System connection to be shut off sooner.

(h) It shall diligently enforce and collect rates, fees and other charges for the services and facilities of the System, will take all steps, actions and proceedings for the enforcement and collection of such rates, charges and fees as shall become delinquent, to the full extent permitted or authorized by law, and will maintain accurate records with respect thereto.

(i) It shall at all times insure and keep insured with responsible insurers all of the properties of the System which are of the character usually insured by owners similarly situated, in an amount equal to the full insurable value of such property, and the proceeds of all such insurance policies shall be available for and shall, to the extent necessary, be applied to the repair and replacement of the damaged property. It shall carry workmen's compensation insurance and public liability insurance in such amounts and to such extent as is customarily carried by owners similarly situated. It shall also at all times carry fidelity bonds on all of its officers and employees who may handle funds derived from the System, in an amount at least equal to the maximum funds in the custody of each such officer or employee at any one time. The cost of such insurance and bonds shall be considered a part of the cost of operating and maintaining the System. The policies of insurance and the fidelity bonds required by this subsection shall be kept available for inspection at reasonable hours by the holder of the Bond.

(j) It shall install and maintain proper books of record and account in accordance with standard accounting practices, separate entirely from other records and accounts of the City, in which full and complete entries shall be made of all dealings and transactions of or in relation to the properties, business and affairs of the System. The said system of books, records and accounts shall be so kept as to reveal in detail each item of income and the disposition thereof, and each item of expense, and shall indicate under what budget item such expense was charged.

(k) It shall permit the payee of the Bond to examine and inspect the System and all papers, books, records, accounts and data of the City required to be maintained hereby at all reasonable times, and shall permit copies or transcripts thereof to be made at all reasonable times.

(l) It shall faithfully and punctually perform all duties with reference to the System, the revenues derived therefrom, and the Bond, as required by the Constitution and laws of the State of Alabama and by this ordinance. All obligations imposed by law upon the City by reason of the issuance of the Bond are hereby recognized and assumed by the City whether or not set forth herein.

(m) No investment shall be made of the proceeds of the Bond or any of the revenues of the System which would result in the Bond being an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

(n) It will proceed with due diligence and reasonable dispatch with completion of construction of the said improvements.

Section 9. The City hereby covenants and agrees that, if the principal of and interest on the Bond are not paid promptly on the due date thereof, it will pay to the payee of the Bond all expenses incident to the collection of any unpaid portion thereof, including a reasonable attorney's fee, but solely out of the revenues of the System. The Bond shall bear interest at the rate of 6.0% per annum from and after maturity if not then paid.

Section 10. The terms, provisions and conditions set forth in this ordinance constitute a contract between the City and the payee or holder of the Bond, and shall remain in effect until the principal of and interest on the Bond shall have been paid in full. No contractual or other obligation herein undertaken or imposed upon the City shall be construed as imposing any pecuniary obligation, other than to apply the revenues of the System as herein provided.

Section 11. The City hereby declares and determines that the Bond is and shall be a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Internal Revenue Code, and covenants and agrees that it will take or cause to be taken all actions, and give all directions, necessary to maintain the character of the Bond as one the interest on which is not includable in gross income under Section 103 of the said Code.


Section 12. The provisions of this ordinance are severable. In the event that any one or more of such provisions or the provisions of the Bond shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect the other provisions of this ordinance or the Bond, and this ordinance shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Duly adopted this 23rd day of June, 2020.

Authenticated:



Clerk



Mayor