

ORDINANCE NO. 08-2006

AN ORDINANCE AMENDING ORDINANCE NO. 03-2006 AUTHORIZING THE CONSTRUCTION OF EXTENSIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER FACILITIES OF THE WATER AND SEWER SYSTEM OF THE CITY OF AUSTIN, ARKANSAS, AUTHORIZING THE ISSUANCE OF A WATER AND SEWER REVENUE BOND FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF THE CONSTRUCTION AND PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Austin, Arkansas (the "City") has, pursuant to Ordinance No. 03-2006 of the City, adopted May 22, 2006 ("Ordinance No. 03-2006"), authorized the issuance of a Water and Sewer Revenue Bond in the principal amount of \$550,000 (the "bond") to finance a portion of the costs of extensions, betterments and improvements to the water facilities of the City's water and sewer system (the "System"); and

WHEREAS, the City has entered into a Loan Agreement with the United States Department of Agriculture (the "Government"), whereby the Government has committed to purchase the bond; and

WHEREAS, the City plans on issuing a Water and Sewer Revenue Bond in the principal amount of \$150,000 (the "Parity Bond"), to finance all or a portion of the costs of extensions, betterments and improvements to the sewer facilities of the System; and

WHEREAS, the City has also entered into a Loan Agreement with the Government whereby the Government has committed to purchase the Parity Bond; and

WHEREAS, the Government has requested that the bond and the Parity Bond be issued on a parity of security; and

WHEREAS, Ordinance No. 03-2006 must be amended to allow the bond and the Parity Bond to be issued on a parity of security;

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

Section 1. There is hereby inserted between the seventh and eighth WHEREAS clause of Ordinance No. 03-2006 the following:

"WHEREAS, the City plans to issue its Water and Sewer Revenue Bond in the principal amount of \$150,000 (the "Parity Bond") on a parity of security with the bond to provide funds to finance extensions, betterments and improvements to the sewer facilities of the System; and".

Section 2. Section 5 of Ordinance No. 03-2006 is hereby amended to read as follows:

Section 5. The bond shall be executed on behalf of the City by the Mayor and City Recorder and shall have impressed thereon the seal of the City. The bond is not a general obligation of the City but is a special obligation, the principal of and interest on which are secured by a pledge of and are payable from revenues derived from the operation of the System ("Revenues"). The pledge of the portion of Revenues derived from the operation of the sewer facilities of the System is (a) subordinate to the pledge in favor of the Prior Bond and (b) on a parity with the pledge in favor of the Parity Bond. The pledge of the portion of Revenues derived from the operation of the water facilities of the System is on a parity with the pledge in favor of the Parity Bond. The bond and interest thereon shall not constitute an indebtedness of the City within any constitutional or statutory limitation."

Section 3. Section 6(a) of Ordinance No. 03-2006 is hereby amended to read as follows:

Section 6. (a) The bond shall be in substantially the following form and the Mayor and City Recorder are hereby authorized and directed to make all the recitals contained therein:

(form of single registered bond)

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
COUNTY OF LONOKE  
CITY OF AUSTIN

\_\_\_\_\_ § WATER AND SEWER REVENUE BOND

No. R-1

\$550,000

KNOW ALL MEN BY THESE PRESENTS:



That the City of Austin, Lonoke County, Arkansas (the "City"), for value received, hereby acknowledges itself to owe and promises to pay to the registered owner, or assigns, solely from the special fund provided as hereinafter set forth, the principal sum of

FIVE HUNDRED FIFTY THOUSAND DOLLARS  
(or the total principal amount outstanding as reflected by the Record of Payment of Advances attached hereto)

with interest on the unpaid balance of the total principal amount at the rate of \_\_\_\_\_% per annum from the date of each advance. The principal and interest shall be payable 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 debts due the United States of America and shall be payable as follows: commencing thirteen (13) months from the date of this bond and monthly thereafter on the same day (except that if this bond is dated the 29th, 30th or 31st day of any month, each monthly payment shall be due on the 28th day of the month) amortized monthly installments of principal and interest in the amount of \$\_\_\_\_\_ each shall be payable until the principal and interest are fully paid, except that final payment of the entire indebtedness, if not sooner paid, shall be due and payable 40 years from the date of this bond.

Payments of the principal and interest installments due hereon shall be made, except for final payment, without presentation and surrender of this bond, directly to the registered owner at his address shown on the bond registration book of the City maintained by the City Recorder as Bond Registrar, and such payments shall fully discharge the obligation of the City to the extent of the payments so made.

The City owns and operates a water and sewer (combined) system (the "System"). This bond is issued for the purpose of financing a portion of the cost to the City of constructing extensions, betterments and improvements to the water facilities of the System, costs of authorizing and issuing this bond and paying interest during construction (the "Costs"), and is issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), including particularly Title 14, Chapter 234, Subchapter 2 of the Arkansas Code of 1987 Annotated, Title 14, Chapter 164,



Subchapter 4 of the Arkansas Code of 1987 Annotated, and Title 14, Chapter 235, Subchapter 2 of the Arkansas Code of 1987 Annotated, and applicable decisions of the Supreme Court of the State, including particularly City of Harrison v. Braswell, 209 Ark. 1094, 194 S.W.2d 12 (1946), and pursuant to Ordinance No. 03-2006 of the City, duly adopted and approved on the 22nd day of May, 2006, as amended by Ordinance No. 08-2006 of the City, duly adopted and approved on the 9th day of October, 2006 (collectively, the "Authorizing Ordinance"). The balance of the Costs are being funded with a loan from an agency of the State of Arkansas. 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 and the registered owner of this bond.

Prepayments of principal installments, or any portion thereof, may be made from funds from any source at any time at the option of the City in inverse chronological order of maturity at a price of the principal amount thereof plus accrued interest. Such prepayments shall not affect the obligation of the City to pay the remaining installments as scheduled herein.

This bond does not constitute an indebtedness of the City within any constitutional or statutory limitation or provision, and the taxing power of the City is not pledged to the payment of the principal of or interest on this bond. This bond is a special obligation payable solely from revenues derived from the operation of the System ("Revenues"). In this regard, the pledge of the portion of Revenues derived from the operation of the sewer facilities of the System is (a) subordinate to the pledge in favor of the City's outstanding Sewer Revenue Bond, Series 1997 dated March 6, 1998 and (b) on a parity with the pledge in favor of the City's Water and Sewer Revenue Bond in the principal amount of \$150,000 (the "Parity Bond"). The pledge of the portion of Revenues derived from the operation of the water facilities of the System is on a parity with the pledge in favor of the Parity Bond. A sufficient amount of Revenues to pay principal and interest has been duly set aside and pledged as a special fund for that purpose identified as the "2006 Water and Sewer Revenue Bond Fund" created by the Authorizing Ordinance. The City has fixed and has covenanted and agreed to maintain rates for use of the System which shall be sufficient at all times to at least

provide for the payment of the reasonable expenses of operation and maintenance of the System, provide for the payment of the principal of and interest on all the outstanding bonds to which all or a portion of Revenues are pledged as the same become due and to establish and maintain debt service reserves, all as set forth in the Authorizing Ordinance.

This bond may be assigned, and in order to effect such assignment the assignor shall promptly notify the City Recorder by registered mail, and the assignee shall surrender this bond to the City Recorder for transfer on the registration records. Every assignee shall take this bond subject to all payments and prepayments of principal and interest (as reflected by the Payment Record maintained by the City Recorder), prior to such surrender for transfer.

THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" WITHIN THE MEANING OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State to exist, happen and be performed precedent to and in the issuance of this bond do exist, have happened and have been performed in regular and due time, form and manner as required by law; that this bond does not exceed any constitutional or statutory limitation of indebtedness; and that provision has been made for the payment of the principal of and interest on this bond, as provided in the Authorizing Ordinance.

IN WITNESS WHEREOF, the City of Austin, Arkansas has caused this bond to be executed in its name by its Mayor and City Recorder, thereunto duly authorized, and its corporate seal to be affixed, all as of the 9th day of October, 2006.

CITY OF AUSTIN, ARKANSAS

ATTEST:

Buandi Binsand  
City Recorder

(SEAL)

By

Dennis Chamberlain  
Mayor



[A Registration Certificate and Record of Payment of Advances shall be attached to the bond.]"

Section 4. Section 11(a) of Ordinance No. 03-2006 is hereby amended to read as follows:

"Section 11. (a) After making the required payment into the Operation and Maintenance Fund and the City of Austin, Arkansas 1997 Sewer Revenue Bond Fund (the "Prior Bond Fund"), which is being maintained pursuant to the Prior Bond Ordinance, there shall be paid by the City Treasurer from the Revenue Fund into a special fund in the name of the City which is hereby created and designated "2006 Water and Sewer Revenue Bond Fund" (the "Bond Fund"), contemporaneously with the payment into the bond fund for the Parity Bond (the "Parity Bond Fund"), the sums in the amounts and at the times hereinafter stated in subsection (b) for the purpose of providing funds for the payment of the principal of and interest on the bond as it matures, and to establish a debt service reserve."

Section 5. Section 11(h) of Ordinance No. 03-2006 is hereby amended to read as follows:

"(h) The bond shall be specifically secured by a pledge of all Revenues, including the Revenues required to be placed into the Bond Fund. The obligation to make payments into the Bond Fund and the obligation to make payments into the Parity Bond Fund shall be on a parity of lien, pledge and security. If the available moneys in the Revenue Fund are insufficient to pay in full the required payments for any month into the Bond Fund and the Parity Bond Fund the available moneys shall be distributed between the Bond Fund and the Parity Bond Fund in proportion to the required payments. This pledge in favor of the bond is hereby irrevocably made according to the terms of this Ordinance, and the City and its officers and employees shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance."

Section 6. Section 14 of Ordinance No. 03-2006 is hereby amended to read as follows:

"Section 14. As long as the bond is outstanding, the City shall not issue or attempt to issue any bonds having or claimed to be entitled to a priority of lien on

Revenues over the lien securing the bond, including any and all future extensions, betterments and improvements to the System.

The Parity Bond may be issued on a parity of security with the bond. Nothing herein shall be construed in any manner to prevent the issuance by the City of additional revenue bonds to finance or pay the cost of constructing extensions, betterments and improvements to the System or to refund outstanding System Bonds; however, any such additional bonds (other than the Parity Bond) shall not be issued on a parity with the bond unless and until (a) there shall have been procured and filed in the office of the City Recorder a statement by an Accountant reciting the opinion that the net Revenues (net Revenues being gross Revenues less operation and maintenance expenses) for the fiscal year preceding the year in which such parity bonds are to be issued were not less than 120% of the average annual debt service requirements on all outstanding System Bonds and the bonds then proposed to be issued and (b) so long as the Government is the owner of the bond, consent is obtained from the Owner."

Section 7. Ordinance No. 03-2006, as amended hereby, shall be and remain in full force and effect.

Section 8. The provisions of this Ordinance are separable and if a section, phrase or provision shall be declared invalid, such declaration shall not affect the validity of the remainder of the Ordinance.

Section 9. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: Oct 9, 2006.

APPROVED:

ATTEST:

Brandi Binsland  
City Recorder

Bernie Charleston  
Mayor

(SEAL)

CERTIFICATE

The undersigned, City Recorder of the City of Austin, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 08-2006, adopted at a special session of the City Council of the City of Austin, Arkansas, held at the regular meeting place in said City at 7 p. .m., on the 9th day of Oct., 2006, and that the Ordinance is of record in Ordinance Record Book No. \_\_\_\_\_, Page \_\_\_\_\_, now in my possession.

October GIVEN under my hand and seal on this 9th day of \_\_\_\_\_, 2006.

Brandi Rossland  
City Recorder

(SEAL)

