

ORDINANCE NO. 2011-11-381

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S NOT TO EXCEED \$5,115,000 OF SALES AND USE TAX REFUNDING BONDS, SERIES 2011, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING SALES AND USE TAX BONDS, SERIES 2005; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT PROVIDING FOR THE DEFEASANCE AND REDEMPTION OF THE SERIES 2005 BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

**WHEREAS**, at a special election held November 2, 1999, a majority of the qualified electors of the City of Tontitown, Arkansas (the "City") voting on the question approved the levy of a one percent (1.00%) sales and use tax within the City (the "Sales and Use Tax") pursuant to the authority of Arkansas Code Annotated (2008 Repl. & 2011 Supp.) Sections 26-75-201 *et seq.* (as from time to time amended, the "Municipal Sales and Use Tax Act"); and

**WHEREAS**, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2011 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its sales and use tax bonds to finance and refinance the costs of various capital improvements, which bonds may be secured by and payable from collections of the Sales and Use Tax; and

**WHEREAS**, pursuant to the provisions of Ordinance No. 192 of the City, adopted and approved on November 3, 2004 (the "Election Ordinance"), there was submitted to the qualified electors of the City the question of the issuance of not to exceed \$6,000,000 in aggregate principal amount of bonds pursuant to Amendment 62 and the Local Government Bond Act to finance all or a portion of the costs of acquiring, constructing and equipping a sewer collection system (the "Project"), said bonds to be secured by a pledge of seventy-five percent (75%) of the collections of the Sales and Use Tax; and

**WHEREAS**, at a special election held January 11, 2005, a majority of the qualified electors of the City voting on the question approved the issuance of said bonds (and the corresponding pledge of 75% of the Sales and Use Tax collections to the payment thereof); and

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Bette Stamps Circuit Clerk  
File 2011-00031397



**WHEREAS**, pursuant to such authority, the City issued its \$6,000,000 Sales and Use Tax Bonds, Series 2005 (the "Series 2005 Bonds"), in order to provide for the funding of the Project, which Series 2005 Bonds are presently outstanding in the aggregate principal amount of \$5,115,000; and

**WHEREAS**, as authorized under the provisions of Amendment 62 and the Local Government Bond Act, the City has now determined to issue and sell its Sales and Use Tax Refunding Bonds, Series 2011, in principal amount not to exceed \$5,115,000 (the "Bonds"), in order to redeem all of the outstanding Series 2005 Bonds and thereby reduce annual debt service obligations; and

**WHEREAS**, the Bonds will be issued and secured by 75% of the City's collections of the Sales and Use Tax; and

**WHEREAS**, the City has made arrangements for the sale of the Bonds to Crews & Associates, Inc., Little Rock, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

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

**Section 1.** Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Refunding Bonds, Series 2011" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Five Million One Hundred Fifteen Thousand Dollars (\$5,115,000), shall mature not later than December 1, 2035, and shall bear interest at rates to be specified in the Bond Purchase Agreement. The average yield on the Bonds as a whole shall not exceed 4.50% per annum. The proceeds of the Bonds, along with other available moneys, will be utilized (i) to defease the Series 2005 Bonds, (ii) to establish a debt service reserve for the Bonds, and (iii) to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in that certain Trust Indenture dated as of December 1, 2011 (the "Indenture"), by and between the City and a bank or other financial institution to be named as trustee (the "Trustee"), to be entered into by the City and the Trustee in substantially the form submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in substantially the form thereof contained in the Indenture submitted to this meeting, and the Recorder-Treasurer is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and Recorder-Treasurer are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form thereof contained in the Indenture submitted to this meeting, with such changes as shall be approved by



such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

**Section 2.** In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged seventy-five percent (75%) of the City's collections of the Sales and Use Tax. The City covenants that the Sales and Use Tax shall not be repealed or reduced while any of the Bonds are outstanding. The City covenants and agrees that all collections from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and collections of said Sales and Use Tax will be deposited with the Trustee and will be transferred and used solely as provided in the Indenture.

**Section 3.** To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Indenture, and the Recorder-Treasurer is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and the Recorder-Treasurer are hereby authorized and directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Sales and Use Tax collections and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Indenture in substantially the form authorized to be executed is on file with the Recorder-Treasurer and is available for inspection by any interested person.)

**Section 4.** There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the Recorder-Treasurer and is available for inspection by any interested person.)



**Section 5.** In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the Recorder-Treasurer and is available for inspection by any interested person.)

**Section 6.** In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and a bank or other financial institution to be named as dissemination agent (the "Dissemination Agent"), and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Dissemination Agent. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Dissemination Agent, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the Recorder-Treasurer and is available for inspection by any interested person.)

**Section 7.** In order to provide for the defeasance and redemption of the Series 2005 Bonds, the Mayor is hereby authorized and directed to execute an Escrow Deposit Agreement to be dated as of the date of its execution (the "Escrow Agreement"), by and between the City and Bank of the Ozarks, Little Rock, Arkansas, as escrow trustee (the "Escrow Trustee"), and the Mayor is hereby authorized and directed to cause the Escrow Agreement to be executed by the Escrow Trustee. The Escrow Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter, the Escrow Trustee and Bond Counsel in order to complete the Escrow Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Escrow Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Escrow Agreement in substantially the form authorized to be executed is on file with the Recorder-Treasurer and is available for inspection by any interested person.)



**Section 8.** The Mayor and Recorder-Treasurer, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement, the Escrow Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the Recorder-Treasurer are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

**Section 9.** The Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The City hereby represents and covenants that the aggregate principal amount of its tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code), including those of its subordinate entities, issued in calendar year 2011 will not exceed \$10,000,000.

**Section 10.** Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

**Section 11.** The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

**Section 12.** All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 13.** It is hereby ascertained and declared that there is an immediate need to reduce the annual debt service obligations of the City relating to the Series 2005 Bonds so as to increase the availability of moneys to the City to fund essential City operations and services. Because such debt service reduction can only be achieved through the expedited issuance of the Bonds bearing current market interest rates, it is hereby declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in full force and effect immediately from and after its passage.

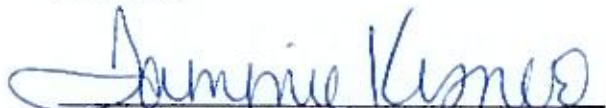
ADOPTED AND APPROVED THIS 1st DAY OF November, 2011.

APPROVED:



\_\_\_\_\_  
Mayor

ATTEST:



\_\_\_\_\_  
Recorder-Treasurer

(S E A L)

Washington County, AR  
I certify this instrument was filed on  
11/09/2011 11:21:03 AM  
and recorded in Real Estate  
File Number 2011-00031397  
Bette Stamps - Circuit Clerk

A handwritten signature in black ink, appearing to be the name 'Bette Stamps', written over the printed name.