

ORDINANCE NO. 2018-09-810

AN ORDINANCE AMENDING ORDINANCE NO. 2017-09-656 AUTHORIZING THE ISSUANCE OF A CITY OF TONTITOWN, ARKANSAS WATER AND SEWER REVENUE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, pursuant to Ordinance No. 2017-09-656, adopted September 19, 2017 ("Ordinance No. 2015-07"), the City of Tontitown, Arkansas (the "City") has authorized the issuance of its Water and Sewer Revenue Bond (the "bond") in the principal amount of \$1,280,000 in order to finance betterments and improvements to the water facilities of the City's water and sewer system (the "Project"); and

WHEREAS, the costs of the Project have increased; and

WHEREAS, the City will finance the increased costs of the Project by the issuance of a Water and Sewer Revenue Bond in the principal amount of \$700,000 (the "Parity Bond"); and

WHEREAS, it is necessary to amend Ordinance No. 2017-09-656 to allow for the issuance of the Parity Bond;

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

Section 1. The fourth and fifth WHEREAS clauses of Ordinance No. 2017-09-656 are hereby amended to read as follows:

"WHEREAS, the total estimated cost of the construction and authorizing and issuing bonds (the "Estimated Cost") is \$1,980,000; and

WHEREAS, the City does not have available funds to undertake the construction but can obtain the necessary funds for paying the Estimated Cost by the issuance of a Water and Sewer Revenue Bond in the principal amount of \$1,280,000 (the "bond") and a Water and Sewer Revenue Bond in the principal amount of \$700,000 (the "Parity Bond"); and"

Section 2. Section 5 of Ordinance No. 2017-09-656 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 Revenues derived from the water facilities of the System in favor of the bond is (a) subordinate to the pledge in favor of the Senior Bond and (b) on a parity with the pledge in favor of the Parity Bond. The pledge of Revenues derived from the sewer facilities of the System in favor of the bond 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. 2017-09-656 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 WASHINGTON
CITY OF TONTITOWN

_____% WATER AND SEWER REVENUE BOND

No. R-1

\$1,280,000

KNOW ALL MEN BY THESE PRESENTS:

That the City of Tontitown, Washington 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

ONE MILLION TWO HUNDRED EIGHTY 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: one month 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 betterments and improvements to the water facilities of the System and costs of authorizing and issuing this bond, 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. 2017-09-656 of the City, duly adopted and approved on the 19th day of September, 2017, as amended (collectively, the "Authorizing Ordinance"). 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 Revenues derived from the water facilities of the System in favor of the bond is (a) subordinate to the pledge in favor of the City's Water Revenue Bond, dated January 8, 2002 and (b) on a parity with the pledge in favor of the City's Water and Sewer Revenue Bond, dated _____, in the original principal amount of \$700,000 (the "Parity Bond"), so long as such obligations are outstanding. The pledge of Revenues derived from the sewer facilities of the System in favor of the bond 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 "2017 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 and other System indebtedness to which Revenues are pledged as the same become due, to establish and maintain debt service reserves and to provide a depreciation fund, 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 SECTION 265(b) 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 Tontitown, 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 _____ day of _____, 20__.

CITY OF TONTITOWN, ARKANSAS

ATTEST:

By _____
Mayor

City Recorder

(SEAL)

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

Section 4. Section 12 of Ordinance No. 2017-09-656 is hereby amended to read as follows:

Section 12. (a) There shall next be paid from the Revenue Fund into a special fund in the name of the City which is hereby created and designated "2017 Water and Sewer Revenue Bond Fund" (the "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 when due and to establish a debt service reserve.

(b) Commencing on the first business day of the month after delivery of the permanent bond and continuing on the first business day of each month thereafter until the bond with interest thereon has been paid in full or provision made for such payment, there shall be deposited into the Bond Fund a sum equal to the installment of principal and interest due on the next monthly installment payment date, for the bond, plus an additional sum equal to 10% of the monthly installment payment. If the interest rate on the bond is 3.375%, the additional sum referenced in the previous sentence will be \$487. When a debt service reserve shall have been accumulated, and so long as it shall remain, in the amount equal to the lesser of (i) \$58,368 or (ii) the maximum annual debt service requirements on the bond (the "required level"), the additional payment need not be made.

(c) If Revenues are insufficient to make the required payment on or before the first business day of the following month into the Bond Fund, then the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund on the first business day of the next month.

(d) If, for any reason, the City shall fail at any time to make any of the required payments into the Bond Fund, or if for any reason the Bond Fund shall be insufficient at any time to make the required payments for principal and interest, as due, any sums then held in the debt service reserve shall be used to the extent necessary in the payment of the principal of and interest on the bond, but such reserve shall be reimbursed from the first available moneys in the Revenue Fund by the increased monthly payments specified in (b) above. The debt service reserve shall be used solely as herein provided.

(e) When the moneys held in the Bond Fund, including the debt service reserve, shall be and remain sufficient to pay the outstanding principal of and interest on the bond, the City shall not be obligated to make any further payments into the Bond Fund.

(f) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bond, except as herein specifically provided. If a surplus shall exist in the Bond Fund over and above the amount necessary to insure the payment, when due, of principal and interest and over and above the debt service reserve's required level, such surplus shall be transferred to the Revenue Fund.

(g) It shall be the duty of the City Treasurer to withdraw from the Bond Fund and to pay to the owner, on or before the date on which each installment hereunder is due, an amount equal to the amount of such installment. No withdrawal of funds from the Bond Fund shall be made for any other purpose except as otherwise authorized in this Ordinance.

(h) The bond shall be specifically secured by a pledge of all Revenues, including the Revenues required to be placed into the Bond Fund. 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.

(i) Provision has been made for the payment of the principal of the temporary bonds from the proceeds of the permanent bond. Interest on the temporary bonds will be paid as due and at maturity from Revenues. The City Treasurer shall pay to the owners of the temporary bonds an amount equal to the interest due on such dates. The City shall not be required to make any payments into the Bond Fund until delivery of the permanent bond unless necessary to prevent a default on the temporary bonds but the City covenants to make payments into the Bond Fund at the times and in the amounts, if any, necessary to prevent a default in payment of principal of or interest on the temporary bonds.

(j) Simultaneously with making the deposit into the Bond Fund, there shall be transferred from the Revenue Fund into the special fund designated "2018 Water and Sewer Revenue Bond Fund" created to secure the Parity Bond (the "Parity Bond Fund"), an amount equal to the required monthly deposit into such fund. The obligation to make the required monthly deposits into the Bond Fund and the Parity Bond Fund shall rank on a parity of security. If the City issues any additional parity bonds, the obligation to make payments into debt service and debt service reserve funds for those bonds shall rank on a parity of security with the obligation to make payments into the Bond Fund and the Parity Bond Fund. In the event the Revenues remaining after the required monthly deposit into the Operation and Maintenance Fund are insufficient to make the full monthly deposits into the Bond Fund, the Parity Bond Fund and the bond funds for the additional parity bonds, the amount deposited into each shall be reduced proportionately."

Section 5. Section 16 of Ordinance No. 2017-09-656 is hereby amended to read as follows:

"Section 16. 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.

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 Obligations; however, any such additional bonds shall not be issued on a parity with the bond unless and until 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 Obligations and the bonds then proposed to be issued. The Parity Bond will be issued without meeting the requirements of this Section.

The additional bonds, the issuance of which is restricted and conditioned by this Section, shall not be deemed to mean bonds the security and source of payment of which are subordinate and subject to the priority of the bond."

Section 6. Section 18(c) of Ordinance No. 2017-09-656 is hereby amended to read as follows:

"(c) The permanent and temporary bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of the Code. The City 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, except qualified 501(c)(3) bonds within the meaning of Section 145 of the Code), including those of its subordinate entities, issued in the calendar year in which the permanent or temporary bonds are issued are not anticipated to exceed \$10,000,000. For arbitrage rebate purposes, the City further covenants and represents that (i) the aggregate principal amount of its tax-exempt obligations (not including "private activity bonds" within the meaning of Section 141 of the Code), including those of its subordinate entities, issued in the calendar year in which the permanent or temporary bonds are issued are not expected to exceed \$5,000,000, and (ii) at least 95% of the proceeds of the temporary and permanent bonds will be expended for governmental activities of the City."

Section 7. The provisions of this Ordinance are hereby declared to be separable, and if any provision shall for any reason be held illegal or invalid, it shall not affect the validity of the remainder of this Ordinance.

Section 8. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Ordinance No. 2017-09-656, as amended hereby, shall be and remain in force and effect.

PASSED: September 18, 2018.

APPROVED:

ATTEST:

Rhonda Adams
City Recorder

Calvin
Mayor

(SEAL)

CERTIFICATE

The undersigned, City Recorder of the City of Tontitown, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 2018-09-810 adopted at a special session of the City Council of the City of Tontitown, Arkansas, held at the regular meeting place in said City at 6:00 p.m., on the 18th day of September, 2018, and that the Ordinance is of record in Ordinance Record Book No. _____, Page _____, now in my possession.

GIVEN under my hand and seal on this 18th day of September, 2018.

Rhonda Arizmendi
City Recorder

(SEAL)