

ORDINANCE NO. 617-96

AN ORDINANCE AUTHORIZING THE ISSUANCE
AND SALE OF \$1,400,000 CITY OF RAINSVILLE
GENERAL OBLIGATION WARRANT
SERIES 1996

BE IT ORDAINED, by the City Council of the City of Rainsville, Alabama, as follows:

SECTION 1. Definitions, Use of Words and Phrases.

(a) The following words and phrases shall have the following respective meanings in this ordinance:

"Bank" means Community Bank, Rainsville, Alabama.

"Code" means the Internal Revenue Code of 1986, as amended.

"Governing Body" means the City Council of the Issuer.

"Incidental Use" means use of the Project by a person or an entity whereby (a) the use does not involve the transfer to the person or entity of possession and control over space that is separated from other areas of the Project by walls, partitions or other physical barriers; (b) the use described in the foregoing clause (a) is not related to any other use of the Project by the same person that is not described in the foregoing clause (a); and (c) all uses of the Project that are described in the foregoing clauses (a) and (b) do not, in the aggregate, involve the use of more than two and one-half percent (2-1/2%) of the Project.

"Issuer" means the City of Rainsville, Alabama.

"Net Proceeds", when used with reference to the Warrant, means the face amount of the Warrant, plus accrued interest and premium, if any, less original issue discount and less proceeds deposited in a reserve fund, if any.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Project" means the improvement extension, and repair of the sewer system facility and all appurtenant facilities thereto of the Issuer and other capital outlay facilities, and any costs relating thereto or in connection therewith.

"Warrant" means the warrant issued pursuant to this ordinance and authorized herein.

(b) The definitions set further herein include both singular and plural. Whenever used herein, any noun or pronoun shall be deemed to include both singular and plural and to cover all genders.

SECTION 2. Findings. The Governing Body has ascertained and determined, and does hereby find and declare that the following facts are true and correct:

(a) It is necessary to the continued progress of the Issuer for the Project to be improved, extension made and it is desirable to refund the Issuer's outstanding 1995 Warrant dated August 31, 1995, to Community Bank.

(b) The total capital costs of the Project, along with the amount necessary to refund the Issuer's outstanding 1995 Warrant dated August 31, 1995, to Community Bank, is currently estimated by the Governing Body to not exceed the face amount of the Warrant.

(c) The Issuer does not now have, and will not have in the foreseeable future, funds available to pay the costs of financing the Project.

(d) In comparison to other financing alternatives, the terms of the Warrant provide attractive and advantageous financing for the Issuer.

SECTION 3. Authorization of the Warrant and Use of Proceeds. Pursuant to the applicable provisions of the Constitution and laws of the State of Alabama, including particularly Section 11-47-2 of the Code of Alabama 1975, as amended, there are hereby authorized to be issued by the Issuer \$1,400,000 aggregate principal amount of its General Obligation--Sales Tax Warrant, Series 1996, the proceeds of which are to be used to finance the Project, to refund the Issuer's outstanding 1995 Warrant dated August 31, 1995, to Community Bank and to pay any costs or fees in connection with the issuance of the Warrant.

SECTION 4. Approval of Form of Warrant. The Issuer hereby acknowledges and approves all of the various terms within the Form of Warrant as indicated herein, including but not limited to, terms with respect to the interest rate(s) (including any interest rate adjustment provisions), premium, if any, repayment terms, maturities, security (i.e., general obligation and full faith and credit of the Issuer and pledge of sales taxes) and method of execution. The Warrant shall be issued as a fully registered warrant without coupons (registration shall be evidenced by the manual signature of the Mayor or Clerk of a registration certificate on the Warrant) and along with the form of assignment applicable thereto shall be in substantially the form attached hereto as Exhibit A, with such insertions, omissions and other variations as the Mayor of the Issuer shall approve as reasonable and in accordance with the laws of the State of Alabama under which the Warrant is authorized, which approval shall be evidenced by, and need only be evidenced by, the execution of the Warrant by the parties executing the Warrant as indicated in Exhibit A hereto; provided, however, there shall be no variation from Exhibit A with respect to the interest rate(s), premium, if any, repayment terms,

maturities or security without prior approval of the Governing Body. The Mayor and City Clerk, separately, in office at the time of any execution of Schedule A attached to the Form of Warrant attached hereto are hereby authorized to execute said Schedule A with respect to draws of proceeds of the Warrant.

SECTION 5. Security. The indebtedness evidenced and ordered paid by the Warrant is a general obligation of the Issuer for the payment of the principal of, premium, if any, and interest hereon and all other amounts payable under the Warrant, and the full faith and credit of the Issuer are pledged thereto. In addition, the Issuer hereby pledges to the payment of the amounts due under the Warrant the proceeds of its existing special privilege or license and excise tax (commonly referred to as a "sales tax"), excluding the "one-half cent" portion thereof presently being paid to the Rainsville Civic Center and Coliseum Authority. Such pledge shall be prior and superior to any pledge or agreement respecting such sales tax of the Issuer.

SECTION 6. Sale of the Warrant. The Warrant may be sold by private sale and is hereby sold to the Bank for a purchase price equal to 100% of its face value. The Clerk of the Issuer is hereby authorized and directed to deliver the Warrant to the said purchaser upon payment to the Issuer of the said purchase price.

SECTION 7. Provisions Constitute Contract. The provisions of this ordinance shall constitute a contract between the Issuer and the registered owner of the Warrant.

SECTION 8. Covenants Regarding Section 103 of the Code. The parties hereto recognize that the Warrant is being sold on the basis that the interest payable thereon is excludable from gross income of the owners thereof under Section 103 of the Code. The Issuer does hereby covenant and agree for the benefit of the owners of the Warrant that it neither will take nor fail to take any action which will cause the interest on the Warrant to be or become includable in gross income for federal income tax purposes.

SECTION 9. No Arbitrage. The Issuer will not directly or indirectly use or permit the use of any proceeds of the Warrant or any other funds of the Issuer, or take or omit to take any action that would cause the Warrant to be an "arbitrage bond" within the meaning of Section 148 of the Code. To that end, the Issuer will comply with all requirements of Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Warrant, including, without limitation, payment from time to time of all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Warrant from time to time. The Issuer intends to draw on the Warrant only when needed to refund the Issuer's outstanding 1995 Warrant dated August 31, 1995, to Community Bank and to pay costs and expenses authorized hereunder and thus does not expect to invest any of the proceeds of the Warrant pending expenditure thereof. The Issuer reasonably expects all of the proceeds of the Warrant to be expended by June 1, 1997.

SECTION 10. Private Business Use Limitation. The Issuer shall assure that (i) not in excess of ten percent (10%) of the Net Proceeds of the Warrant is used for Private Business Use if, in addition, the payment of more than ten percent (10%) of the principal or ten

percent (10%) of the interest due on the Warrant during the term thereof is, under the terms of the Warrant of any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (a) in excess of five percent (5%) of the Net Proceeds of the Warrant is used for a Private Business Use, and (b) an amount in excess of five percent (5%) of the principal or five percent (5%) of the interest due on the Warrant during the term thereof is, under the terms of the Warrant or any underlying arrangement, directly or indirectly secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said five percent (5%) of Net Proceeds of the Warrant used for a Private Business Use shall be used for a Private Business Use related to the governmental use of a portion of the Project and shall not exceed the proceeds used for the governmental use of the portion of the Project to which such Private Business Use is related. In addition, the proceeds of the Warrant allocable to the Incidental Use of the Project shall not exceed two and one-half percent (2-1/2%) of the proceeds of the Warrant. Further, the Issuer expects that neither the Project nor any other property financed with the proceeds of the Warrant will be used, administered, managed or leased by any person or entity other than by the Issuer. In no event will the Project or such other property be used, administered, managed or leased by any person or entity other than the Issuer unless the guidelines set forth in Revenue Procedure 82-14 or Revenue Procedure 82-15, as the case may be, or any successor thereto are satisfied.

SECTION 11. Private Loan Limitation. The Issuer shall assure that not in excess of the lesser of five percent (5%) of the Net Proceeds of the Warrant or five million dollars are used, directly or indirectly, to make or finance a loan (other than loans constituting nonpurpose investments (within the meaning of Section 148(f)(6)(A) of the Code)) to persons other than state or local government units.

SECTION 12. Federal Guarantee Prohibition. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Warrant to be "federally guaranteed" within the meaning of Section 149(b) of the Code and Treasury Regulations applicable thereto.

SECTION 13. Warrant Designated as a Qualified Tax-Exempt Obligation. The Issuer does hereby find and determine that the reasonable anticipated amount of "tax-exempt obligations" (as such term is used in Section 265(b)(3) of the Code) which will be issued by the Issuer and all "subordinate entities" thereof during the current calendar year does not exceed \$10,000,000 (excluding private activity bonds under Section 141 of the Code, but including qualified 501 (c)(3) bonds as defined in Section 145 of the Code). The term "subordinate entity" shall have the meaning as defined or used in Section 265(b)(3) of the Code, including without limitation, public corporations or non-profit associations (i) the directors (or other members of the governing body) of which are appointed, in whole or in part, by the governing Body or by the chief executive officer of the Issuer, whether pursuant to general law or local law applicable

to the Issuer, (ii) formed by the action of the Governing Body, (iii) otherwise subject to substantial control by the Governing Body, (iv) deriving its authority to issue bonds, notes, warrants and similar obligations, or its authority otherwise to incur indebtedness, from the Issuer or the Governing Body, (v) the property of which will revert to, or otherwise vest in, the Issuer upon the dissolution or other cessation of existence of such public corporation, board, agency, bureau, commission, non-profit corporation or non-profit association, (vi) which otherwise are "on behalf of" issuers of bonds, notes or other evidences of indebtedness with respect to the Issuer (including, without limitation, any entity or association which is a "constituted authority" within the meaning of Revenue Ruling 57-187, within the meaning of Treas. Reg. §1.103(b) or within the meaning of Proposed Treas. Reg. §1.103(c), and any entity or association constituting a "63-20 corporation" or comparable entity or association satisfying the requirements of Revenue Ruling 63-20 or the requirements of Revenue Procedure 82-26, (vii) which otherwise are "subordinate" to the Issuer, or (viii) other entities formed to avoid the purposes of the \$10,000,000 exception specified in Section 265(b)(3) of the Code or the \$5,000,000 exception specified in Section 148(f)(4)(D) of the Code. The Governing Body covenants and represents that the calendar year during which this ordinance is being adopted is the same calendar year during which the Warrant shall be issued. The Issuer covenants that the Warrant does not constitute a private activity bond under Section 141 of the Code. The Issuer covenants and represents that the Issuer shall receive all the benefits resulting from the issuance of the Warrant, within the meaning of Section 265(b)(3) of the Code.

SECTION 14. Small Issuer Exemption from Rebate Requirements. The Issuer desires that Section 148(f)(4)(D) of the Code apply to the Warrant. The Issuer covenants that it is a governmental unit with general taxing powers, that the Warrant is not a "private activity bond" as defined in Section 141 of the Code, that 95% or more of the Net Proceeds of the Warrant are to be used for a local governmental activities of the Issuer and that the aggregate face amount of all tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer, including all subordinate entities (as such term is used in Section 148(f)(4)(D) of the Code and as referred to in the preceding Section hereof) of the Issuer during the current calendar year is not reasonably expected to exceed \$5,000,000. The Governing body covenants and represents that the calendar year during which this ordinance is being adopted is the same calendar year during which the Warrant shall be issued.

SECTION 15. Execution of Other Documents. All of the officials of the Issuer are hereby separately authorized and directed in the name and on behalf of the Issuer to take any and all actions that they may deem advisable in order to give effect to the intent of this ordinance, and in connection therewith to perform in the name of the Issuer such actions and to execute, deliver, seal, attest and accept such other ancillary documents and certificates, as may be necessary or advisable to the issuance and sale of the Warrant, and to carry out fully the financing hereinabove authorized, and all such actions taken are hereby ratified and confirmed as valid and binding on the Issuer.

SECTION 16. Provisions of Ordinance Severable. The various provisions of this ordinance are hereby declared to be severable. In the event any provisions hereof shall be held invalid by a court of competent jurisdiction such invalidity shall not affect any other portion of this ordinance.

SECTION 17. Certain Covenants of the Issuer. The Issuer hereby covenants (i) not to reduce the sales tax from the present level (of four cents) nor pledge, encumber, or dedicate sales tax revenues other than the pledge to the Bank and the dedication of one-half cent of the sales tax to the Rainsville Civic Center and Coliseum Authority, (ii) not to exceed its total annual expense budget by more than 10%, (iii) to provide, in form acceptable to the Bank (a) the Issuer's annual audited financial statements within ninety (90) days of the end of the Issuer's fiscal year, which statements shall be prepared by independent certified public accountants, and (b) the Issuer's monthly interim financial statements within thirty (30) days of the end of each month, and (iv) to pay all costs, fees and expenses incurred by the Bank (including without limitation, attorneys' fees and expenses) relating to or arising from (a) non-payment of any amount due under the Warrant or (b) breach of any covenant of the Issuer under this ordinance or the Warrant.

SECTION 18. Effective Date. This ordinance shall become effective immediately upon its passage by the Governing Body.

ADOPTED this 17 day of June, 1996.

CITY OF RAINSVILLE, ALABAMA

By: Reg Anderson
Mayor

ATTEST:

Andy Lewis
City Clerk

[Seal]

CERTIFICATION

I, Judy Lewis, Clerk of the City of Rainsville, Alabama (the "Issuer"), do hereby certify that the following is a true and correct copy of Ordinance No. 6-17-96 which was duly passed by the City Council of the Issuer at its regular meeting held on June 17, 1996. I further certify that the said meeting was duly held pursuant to all required notices, that a quorum of the City Council was present and voting throughout and that the said Ordinance is in full force and effect and has not been rescinded, amended or modified since its adoption.

Dated June 17, 1996.



City Clerk

SEAL