

ORDINANCE NO. 2023-05

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF BETTERMENTS AND IMPROVEMENTS TO THE SEWER SYSTEM OF THE CITY OF COTTER, ARKANSAS; AUTHORIZING THE ISSUANCE OF A SALES AND USE TAX AND WATER AND SEWER REVENUE BOND FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF THE CONSTRUCTION; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BOND; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Cotter, Arkansas (the "City") owns and operates a water and sewer system, which is operated as one interrelated municipal undertaking (the "System"); and

WHEREAS, the City Council has determined that betterments and improvements to the City's sewer system (the "construction") should be made in order that the City and its inhabitants may have adequate and proper sewer facilities; and

WHEREAS, the City Council has had prepared by a duly qualified consulting engineer a preliminary report and estimates of costs of the construction, which have been examined and approved by the City Council and a copy filed in the office of the City Recorder where it may be inspected by any interested person; and

WHEREAS, the total estimated cost of the construction, including bond issuance costs, is \$2,170,000; and

WHEREAS, there was submitted to the qualified electors of the City the question of issuing capital improvement bonds in the maximum principal amount of \$1,551,000 for the purpose of financing a portion of the costs of the construction; and

WHEREAS, at the special election held May 11, 2021, a majority of the electors voting on the question approved the issuance of the bonds; and

WHEREAS, the City does not have sufficient funds to undertake the construction but can obtain the necessary funds by issuing its Sales and Use Tax and Water and Sewer Revenue Bond in the maximum principal amount of \$1,551,000 (the "bond") and from grants to be received from an agency of the United States of America; and

WHEREAS, the City has entered into a Loan Agreement (the "Loan Agreement") with the United States of America, acting by and through the Rural Utility Service, United States Department of Agriculture ("USDA-RUS"), whereby USDA-RUS has committed to purchase the bond; and

principal of the bond, with interest, is fully paid, except that final payment of the bond shall be due and payable not later than forty (40) years from the date of the bond, subject to prepayment prior to maturity as provided in the face of the bond.

The bond will be issued in typewritten form, registered as to both principal and interest, payable to the registered owner, or registered assigns (the "Owner"), and shall be numbered R-1.

Payment of principal and interest shall be by preauthorized electronic debit on the date that payment is due, without presentation or surrender of the bond (except upon final payment) and such payments shall discharge the obligation of the City to the extent thereof. The City Recorder shall keep a payment record and make proper notations thereon of all payments of principal and interest.

Payment of principal and interest shall be in any coin or currency of the United States of America which, as at the time of payment, shall be legal tender for the payment of debts due the United States of America. When the principal of and interest on the bond have been fully paid, it shall be canceled and delivered to the City Recorder.

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 (a) collections of the City's 1% sales and use tax levied by Ordinance No. 2020-05 of the City, adopted January 28, 2021 and approved at the special election held May 11, 2021 (the "Tax") and (b) revenues derived from the operation of the System ("System Revenues"). The bond shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation.

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)
(To be typewritten)

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF BAXTER
CITY OF COTTER
_____% SALES AND USE TAX AND
WATER AND SEWER REVENUE BOND

No. R-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS:

This bond does not constitute an indebtedness of the City within any constitutional or statutory limitation or provision. This bond is a special obligation payable solely from (a) collections of the City's 1% sales and use tax levied by Ordinance No. 2020-05 of the City, adopted January 28, 2021, and approved at the special election held May 11, 2021 ("Tax Revenues") and (b) revenues derived from the operation of the City's water and sewer system ("System Revenues"). A sufficient amount of Tax Revenues and System Revenues to pay principal and interest has been duly set aside and pledged as a special fund for that purpose, identified as the "2023 Sales and Use Tax and 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 City's water and sewer system (the "System") which shall be sufficient at all times, along with Tax Revenues, 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 System Revenues are pledged as the same become due, to establish and maintain debt service reserves and to provide a short-lived asset reserve fund, all as set forth in the Authorizing Ordinance.

This bond may be assigned, and in order to affect 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 of Arkansas 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 Cotter, 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 _____, 202_____.

CITY OF COTTER, ARKANSAS

ATTEST:

Mayor

City Recorder

(SEAL)

months, less the reasonably anticipated cost of operation and maintenance for the next 12 months and less the required deposits into short-lived asset reserves and/or depreciation reserves for the next 12 months) equal to not less than 120% of the maximum amount that will become due in any year thereafter for principal, interest and trustee's and paying agent's fees on all System Bonds.

Section 9. The Treasurer of the City (the "Treasurer") shall be the custodian of Tax Revenues and the System Revenues (collectively, the "Revenues") and that officer shall give bond for the faithful discharge of his or her duties in such amounts as approved by the City Council. All Revenues shall at all times be accounted for separately and distinctly from other moneys of the City. All Revenues shall be held in trust for the Owner and shall be used and applied only as provided herein. Except as hereinafter provided, all Revenues shall be deposited in such depository or depositories for the City as may be lawfully designated from time to time by the City; subject, however, to the giving of security as now or as hereafter may be required by law and provided that such depository or depositories shall hold membership in the Federal Deposit Insurance Corporation ("FDIC"). All deposits shall be in the name of the City and shall be so designated as to indicate the particular fund to which the Revenues belong.

Section 10. The Treasurer shall deposit all Tax Revenues and when received into a special fund of the City that is hereby created and designated "Sales and Use Tax Revenue Fund" (the "Tax Fund"). Any amounts not needed to make the deposits required in Sections 12, 13 and 14 herein may be used for any lawful municipal purposes which, as of the date of adoption of this Ordinance, are water and sewer purposes.

Section 11. All System Revenues shall be paid as and when received into a special fund of the City which is hereby created and designated "Water and Sewer System Revenue Fund" (the "Revenue Fund"). All moneys at any time in the Revenue Fund shall be applied to the payment of the reasonable and necessary expenses of operation and maintenance of the System, to the payment of the principal of and interest on System Bonds, to the maintenance of any required debt service reserves and short-lived asset reserve and/or depreciation reserves at the required levels and otherwise as described herein.

Section 12. There shall first be paid from the Revenue Fund (or from the Tax Fund at the option of the City) into a special fund of the City hereby created and designated "Water and Sewer System Operation and Maintenance Fund" (the "Operation and Maintenance Fund"), on the first day of each month, an amount sufficient to pay the operation, repair and maintenance expenses of the System for such month and from which disbursements shall be made only for those purposes.

If in any month for any reason there shall be a failure to transfer and pay the required amount into the Operation and Maintenance Fund, the amount of any deficiency shall be added to the amount otherwise required to be transferred and paid into the Operation and Maintenance Fund in the next succeeding month. If any surplus shall be accumulated in the Operation and Maintenance Fund over and above the amount which shall be necessary to defray the costs of operation and maintenance of the System during the remainder of the then current fiscal year and the next ensuing fiscal year, such surplus may be transferred to the Revenue Fund.

(g) It shall be the duty of the 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. 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 and accrued interest on the temporary bonds from the proceeds of the permanent bond and 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) The City shall also pay into the Bond Fund such additional sums as necessary to provide for any arbitrage rebate due the United States Treasury under Section 148(f) of the Code.

Section 14. There is hereby created a special fund of the City designated "2023 USDA Water and Sewer Short-Lived Asset Reserve Fund" (the "Short-Lived Asset Reserve Fund"). There shall be paid from the Revenue Fund (or from the Tax Fund at the option of the City) into the Short-Lived Asset Reserve Fund, an amount equal to \$674 per month or \$8,083 annually, until the total balance in the Short-Lived Asset Reserve Fund is \$113,750. So long as the balance of \$113,750 is maintained in the Short-Lived Asset Reserve Fund, no additional deposit therein is required from the Tax Fund or the Revenue Fund. The moneys in the Short-Lived Asset Reserve Fund shall be used to pay for repairs and/or replacement of major System assets identified by the City's consulting engineer in the preliminary engineering report that was developed for the construction.

Section 15. Any surplus in the Revenue Fund, after making the required deposits into the other funds as set forth herein may be used for purposes related to the System, including particularly, without limitation, the redemption of System Bonds and the construction of extensions, betterments and improvements to the System.

Section 16. The principal and interest installments shall be prepayable prior to maturity as provided in the bond form in Section 6 hereof.

Section 17. 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.

The Owner may waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Any costs of enforcement of the bond or of any provision of this Ordinance, including reasonable attorney's fees, shall be paid by the City.

Section 19. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the temporary and permanent bonds to be included in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City covenants that the proceeds of the bonds and moneys that are deposited in the funds identified herein will not be used directly or indirectly in such manner as to cause such bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of, the improvements financed by the permanent and temporary bonds or the proceeds thereof, in such manner as to cause such bonds to be "private activity bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of such bonds to make or finance loans to any person, (ii) that while such bonds are outstanding the System and the improvements financed by such bonds will only be used by persons on a basis as members of the general public or by state or local governmental units and (iii) charges for use of the System while the bonds are outstanding will be based upon rates for usage only and not by contract with any nongovernmental person.

(c) The temporary and permanent 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 years in which the bonds are issued does not and will not exceed \$10,000,000. 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 years in which the bonds are issued will not and shall not exceed \$5,000,000, and (ii) at least 95% of the proceeds of the bonds will be expended for local governmental activities of the City.

(d) The City covenants that it will take no action which would cause the temporary and permanent bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. Nothing in this Section shall prohibit investments in bonds or notes issued by the United States Treasury.

When the construction shall have been completed, this fact shall be evidenced by the filing with the depository in which the Construction Fund is deposited of a certificate signed by the Mayor and the Engineers, which certificate shall state the date of such completion and shall state that all obligations which are payable from the Construction Fund have been discharged. Upon receipt of the above certificate the depository with which the Construction Fund is deposited shall pay or transfer any remaining balance into the Bond Fund, where it shall be applied immediately to prepayment of the bond in multiples of \$1,000 in principal amount. Any remaining balance of less than \$1,000 shall be deposited in the debt service reserve in the Bond Fund. The City shall require the depository to execute an appropriate deposit agreement embodying the substance of the provisions of this Section.

Section 21. (a) Moneys held for the credit of the Construction Fund shall, as nearly as may be practicable, be continuously invested and reinvested in direct obligations of, or obligations the principal of and interest on which are fully guaranteed by, the United States Government ("Government Obligations") or other investments authorized by State law, which mature not later than the date or dates when the moneys will be needed for proper disbursements.

(b) Moneys held for the credit of the debt service reserve in the Bond Fund shall be continuously invested and reinvested in Government Obligations or other investments authorized by State law, which mature not later than ten (10) years after the date of investment.

(c) Moneys held for the credit of any other fund may, at the option of the City, be invested and reinvested by the City in Government Obligations or other investments authorized by State law, which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the date or dates when the moneys held for the credit of the particular fund will be required for the purpose intended.

(d) Obligations purchased as an investment of moneys in any fund shall be deemed a part of the fund, and the interest accruing thereon and any profit realized from such investment shall be credited to the fund, and any loss resulting from the investment shall be charged to such fund. Earnings on moneys in the debt service reserve which cause the required level to be exceeded shall be transferred to the Bond Fund and used as a credit against the next monthly payment from the Revenue Fund.

(e) Moneys invested in Government Obligations or other investments authorized by State law need not be secured by the depository bank.

Section 22. The City covenants and agrees that it will maintain the System in good condition and operate it in an efficient manner and at reasonable cost. While the bond is outstanding, the City agrees that it will insure, and at all times keep insured, in the amount of the actual value thereof, in a responsible insurance company or companies authorized and qualified under the laws of the State to assume the risk thereof, major items of machinery and equipment, pumps, electrical items and all above-ground structures of the System (except reservoirs, standpipes and elevated tanks and other structures built entirely of combustible materials if such structures are not normally insured) against loss or damage thereto from fire, and other risks covered by extended property insurance. Flood insurance will be maintained on any structure located in a flood plain other than intake structures and lines. In the event of loss, the proceeds of

or a State or federal auditor if allowed by State law, and must be submitted within 9 months after the end of the fiscal year.

If the City expends \$750,000 or more in federal financial assistance per fiscal year, an annual audit under the Single Audit Act is required. The total federal funds expended from all sources shall be used to determine federal financial assistance expended. Expenditures of interim financing are considered federal expenditures.

If the City expends less than \$750,000 in federal financial assistance per fiscal year and has an outstanding loan balance with USDA-RUS of less than \$1,000,000, the City may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. The City may use Form RD 442-2, "Statement of Budget, Income and Equity," and Form RD 442-3, "Balance Sheet," or similar format to provide the financial information. The financial statements must be signed by the Mayor and submitted within 60 days after the end of the fiscal year.

Thirty days prior to the beginning of each fiscal year after the System commences operations, the City shall submit an annual budget and projected cash flow to the Owner. With the submission of the annual budget, the City must provide a current rate schedule, a current listing of the members of the City Council and their terms. The budget must be signed by the Mayor. Form RD 442-2 or similar format may be used.

Section 24. The provisions of this Ordinance shall constitute a binding contract between the City and the Owner, and the City will at all times strictly adhere to the terms and provisions hereof and fully discharge all of its obligations hereunder. However, the Owner may, from time to time, approve the adoption of supplemental ordinances for the purpose of amending or rescinding any of the terms or provisions contained in this Ordinance or in any supplemental ordinance.

Section 25. In the event the office of Mayor, City Recorder, Treasurer or City Council shall be abolished, or any two or more of such offices shall be merged or consolidated, or in the event the duties of a particular office shall be transferred to another office or officer, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such office or officer shall be performed by the office or officer succeeding to the principal functions thereof, or by the office or officer upon whom such powers, obligations and duties shall be imposed by law. In this regard, if the City should ever fail to maintain the office of Treasurer, the duties of the Treasurer hereunder shall be performed by the City Recorder.

Section 26. This Ordinance shall not create any right of any kind, and no right of any kind shall arise hereunder pursuant to it, until the bonds authorized by this Ordinance shall be issued and delivered.

Section 27. The owner or owners of the temporary bonds shall have all rights of the Owner hereunder while the temporary bonds are outstanding.

CERTIFICATE

The undersigned, City Recorder of the City of Cotter, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. _____, adopted at a regular session of the City Council of the City of Cotter, Arkansas, held at the regular meeting place in said City at 6:00 o'clock p.m., on the 5th day of October, 2023, and that the Ordinance is of record in Ordinance Record Book of the City now in my possession.

GIVEN under my hand and seal on this 5th day of October 2023.

City Recorder

(SEAL)