

## ORDINANCE NO. 20-831

AN ORDINANCE AUTHORIZING THE OFFERING OF \$5,000,000 CITY OF GENTRY, ARKANSAS WATER AND SEWER REVENUE BONDS, SERIES 2020 FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COST OF CERTAIN IMPROVEMENTS; PLEDGING WATER AND SEWER REVENUES TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT AND THE EXECUTION AND USE OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH THE MARKETING OF SUCH BONDS; AUTHORIZING AND APPROVING THE EXECUTION AND USE OF AN OFFICIAL STATEMENT; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE SALE OF THE BONDS; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Gentry, Arkansas (the “**City**”) owns and operates a water storage and distribution system, wastewater treatment system, and sanitation system (the “**System**”); and

WHEREAS, the City has also determined that certain extensions, betterments and improvements to the System are necessary, including construction and installation of a new composite elevated water storage tank to provide water storage for the “Y City” pressure plane zone of the System, which serves the eastern portion of the City’s water distribution system together with the construction and installation of various other improvements to the System (collectively, the “**Improvements**” or the “**Project**”); and

WHEREAS, the City desires that the costs of the Project, the costs of funding a debt service reserve fund, and the costs associated with the issuance of the Bonds be financed with the City’s Water and Sewer Revenue Bonds, Series 2020 (the “**Bonds**”); and

WHEREAS, the City is authorized and empowered under the Constitution and laws of the State of Arkansas, including particularly Amendment 65, Arkansas Code Annotated §§ 14-234-201 *et seq.*, §§14-235-201 *et seq.*, and §§ 14-164-401 *et seq.* (collectively, the “**Authorizing Legislation**”) to issue and sell revenue bonds for the purpose purchasing and installing additional improvements to the System, funding a debt service reserve, and paying costs incidental thereto; and

WHEREAS, the City has selected the firm of Stephens Inc. to be the underwriter for the Bonds (the “**Underwriter**”), the law firm of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. to be bond counsel for the Bonds (“**Bond Counsel**”), and Simmons Bank, Pine Bluff, Arkansas as trustee for the Bonds (the “**Trustee**”); and

WHEREAS, the City has made arrangements for the sale of the Bonds to the Underwriter at a price of \$4,968,073.45 (par amount plus net original issue premium of \$43,073.45 and less Underwriter’s discount of \$75,000.00) (the “**Purchase Price**”), pursuant to a Bond Purchase

Agreement between the Underwriter and the City (the “**Bond Purchase Agreement**”), which has been presented to and is before this meeting; and

WHEREAS, the Preliminary Official Statement, dated October 13, 2020 offering the Bonds for sale (the “**Preliminary Official Statement**”), has been presented to and is before this meeting; and

WHEREAS, the Bonds will be issued pursuant to a First Supplemental Trust Indenture (the “**Indenture**”) between the City and the Trustee; and

WHEREAS, in connection with the sale of the Bonds it will be necessary for the City to enter into a Continuing Disclosure Agreement (the “**Disclosure Agreement**”) with the dissemination agent for the Bonds; and

WHEREAS, in order to market the Bonds and determine the total principal amount of the Bonds, the Underwriter requires a Preliminary Official Statement in a form deemed final pursuant to Rule 15c2-12 of the Securities and Exchange Commission and a final Official Statement (collectively, the “**Official Statement**”), as more particularly described in the Bond Purchase Agreement; and

WHEREAS, the City intends to issue the Bonds as expeditiously as possible so that the Improvements may be accomplished; and

WHEREAS, the City must “deem final” for purposes of Rule 15c2-12 of the Securities and Exchange Commission, the preliminary official statement for the Bonds; and

WHEREAS, a public hearing on the issuance of the Bonds was conducted by the Mayor of the City on October 13, 2020 at 6:30 p.m. at the regular meeting place of the City Council of the City at 104 East Main Street, Gentry, Arkansas pursuant to a Notice of Public Hearing published in the *Westside Eagle Observer* on September 30, 2020; and

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

Section 1.     **Purchase and Sale.** The offer of the Underwriter for the purchase of the Bonds from the City at the Purchase Price, subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby accepted and the Bond Purchase Agreement, in substantially the form submitted to this meeting, is approved and the Bonds are hereby sold to the Underwriter. The Mayor of the City is hereby authorized and directed to execute and deliver the Bond Purchase Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Bond Purchase Agreement. The Mayor and the City Clerk/Recorder of the City, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Bonds, the execution and delivery of such other papers and documents necessary to effect the issuance of the Bonds, including particularly the Disclosure Agreement and the performance of all acts of whatever nature necessary to effect and carry out the City conferred by this Ordinance. The Mayor and the City Clerk/Recorder of the City are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates, and other instruments.

Section 2.     **Useful Life.** The City hereby finds and declares that the period of usefulness of the Improvements will be more than 30 years, which is longer than the term of the Bonds.

Section 3.     **Preliminary Official Statement.** The Preliminary Official Statement is hereby approved and the previous use and distribution of the Preliminary Official Statement by the Underwriter in connection with the sale of the Bonds is hereby in all respects ratified, approved and confirmed, and the Mayor of the City is hereby authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and to deem it final for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the “**Rule**”), and the Mayor be and he is hereby authorized and directed, for and on behalf of the City, to execute the final Official Statement in the name of the City.

Section 4.     **Authorization of the Bonds.** Under the authority of the Constitution and laws of the State, including particularly Constitution and laws of the State of Arkansas, including particularly the Authorizing Legislation, the Bonds are hereby authorized and ordered issued in the total principal amount of \$5,000,000, the proceeds of the sale of which are necessary to finance all or a portion of the cost of accomplishing the Improvements, and expenses incidental thereto, to pay the expenses of issuing the Bonds, including, but not limited to, the cost of a debt service reserve fund. The Bonds shall bear interest at the rates and shall mature on June 1 in the amounts and in the years set forth in the Bond Purchase Agreement approved herein.

Section 5.     **Designation of Underwriter, Bond Counsel and Trustee.** The City hereby designates the Underwriter as underwriter for the Bonds and Bond Counsel as Bond Counsel for the Bonds, and the Trustee as trustee for the Bonds.

Section 6.     **Authority of Officials.** The Mayor of the City, and the City Clerk/Recorder of the City, where applicable, or any one of them individually, are hereby authorized and directed to carry out or cause to be carried out all appropriate actions, to execute such other certificates or documents to evidence authority as authorized herein, and to take such other actions as they, in consultation with Bond Counsel and the Underwriter, shall consider necessary or advisable in connection with this Ordinance and the Preliminary Official Statement, in order to prepare for the issuance, sale, and delivery of the Bonds by the City, all as authorized by law and this Ordinance. The Underwriter, upon final approval of the Mayor, is authorized to rely upon and to use the Preliminary Official Statement to market the Bonds to potential purchasers.

Section 7.     **Approval of Official Statement.** The form of Official Statement and the Appendices thereto are hereby authorized to be approved by the Mayor, and each of the Mayor and the City Clerk/Recorder of the City is authorized, acting alone or together, to participate in the completion of the Official Statement and each is authorized, acting alone or together, to approve, execute and deliver the Official Statement on behalf of the City and to authorize the Underwriter to use it in connection with the public offering of the Bonds, and each is authorized to execute and deliver to the Underwriter of the Bonds, a certificate when requested by the Underwriter of the Bonds, to the effect that the Official Statement is accurate and complete.

**Section 8.**     **Pledge of Revenues, Resources, and Properties.** The Bonds shall be primarily payable from, and secured by a pledge of, the net revenues that are derived from the operation of the System, and the City hereby expressly pledges and appropriates all revenues and income of the System to the payment of the principal of and interest on the Bonds when due at maturity or at redemption prior to maturity, administrative costs, the fees and expenses of the Trustee and any required arbitrage rebate due to the United States, and further pledges all real estate and premises comprising the System, all System properties, and all replacement properties, as more particularly described in the Indenture, as security for repayment of the Bonds. Such pledge is on a parity of security with a pledge of such net revenues and mortgage lien securing the City's Water and Sewer Revenue Refunding Bonds, Series 2016 (the "**Series 2016 Bonds**").

**Section 9.**     **Statutory Mortgage Lien.** There shall also be granted a statutory mortgage lien upon the water facilities that are part of the System (including all extensions, improvements and betterments now or hereafter existing) that shall exist in favor of the bondholder, and each of them and such water facilities shall remain subject to such statutory mortgage lien until payment in full of the interest on and principal of the Bonds, provided, however, that such statutory mortgage lien shall be interpreted according to the decision of the Supreme Court of the State in City of Harrison v. Braswell, *supra*.

**Section 10.**   **Approval of Trust Indenture.** The form of Indenture to secure the Bonds and the Exhibits thereto are hereby authorized to be approved by the Mayor, and each of the Mayor and the City Clerk/Recorder of the City is authorized, acting alone or together, to participate in the completion of the Indenture and each is further authorized, acting alone or together, to approve, execute and deliver the Indenture on behalf of the City. The Mayor and the City Clerk/Recorder are each authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Indenture. The Indenture is given in supplement and amendment to that certain Trust Indenture dated September 28, 2016 by and between the City and the Trustee.

**Section 11.**   **Approval of Continuing Disclosure Agreement.** The form of Disclosure Agreement is hereby authorized to be approved by the Mayor, and each of the Mayor and the City Clerk/Recorder of the City is authorized, acting alone or together, to participate in the completion of the Disclosure Agreement and each is further authorized, acting alone or together, to approve, execute and deliver the Disclosure Agreement on behalf of the City. The Mayor and the City Clerk/Recorder are each authorized and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement.

**Section 12.**   **Qualified Tax-Exempt Obligation.** The City represents that the aggregate principal amount of its qualified tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code that are not "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code), issued in calendar year 2020 are not reasonably anticipated to exceed \$10,000,000.

**Section 13.**   **Other Actions.** All actions heretofore taken by the City, including by the Mayor, the City Clerk/Recorder, the Finance Director of the City, and the other officers and representatives, in connection with the offer and sale of the Bonds are hereby in all respects ratified and approved.

Section 14.     **Severability.** That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 15.     **Repeal if Conflict.** That all parts of this Ordinance in conflict with any provision of the Arkansas Code are hereby repealed to the extent of such conflict, and the provisions of any prior resolution or ordinance of the City in conflict with this Ordinance are likewise repealed to the extent of any conflict.

Section 16.     **Proceeds.** Proceeds of the Bonds will be applied to accomplish the Project upon issuance of the Bonds.


Section 17.     **Public Hearing.** The action of the officers of the Mayor and the City Clerk/Recorder in giving notice of public hearing(s) with respect to the issuance of the Bonds and conducting the public hearing(s) is hereby ratified and confirmed.

Section 18.     **Emergency Clause.** It is hereby found and determined that the Project is immediately necessary in order to preserve the public health, safety and welfare and that the construction thereof cannot be accomplished without the issuance of the Bonds. Therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.

PASSED:      October 20, 2020.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:  
  
\_\_\_\_\_  
City Clerk/Recorder  
(SEAL)



## CERTIFICATE

The undersigned, City Clerk/Recorder of the City of Gentry, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 20-831, adopted at a special session of the City Council of the City of Gentry, Arkansas, held at the regular meeting place in the City at 6:30 p.m. on October 20, 2020, and that Ordinance No. 20-831, is of record in Ordinance/Resolution Book No. 7, located at City Hall.

GIVEN under my hand and seal on this 20<sup>th</sup> day of October, 2020.

  
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City Clerk/Recorder

(SEAL)

