

ORDINANCE NO 2023-05

**TO PROVIDE FOR THE ISSUANCE OF A
SUBORDINATE SEWER REVENUE BOND, SERIES 2023
OF THE CITY OF LOXLEY IN THE PRINCIPAL AMOUNT OF \$4,825,000**

BE IT ORDAINED by the Mayor and City Council (the “Council”) of the City of Loxley, Alabama (the “City”), as follows:

Section 1. Findings of Council. Having made due and proper investigation of the matters hereinafter referred to, the Council hereby finds and determines:

(a) The City previously adopted Resolution 2022-25 at a regular meeting of the Council held on August 8, 2022 in which the Council approved reclassification of the Town of Loxley as the City of Loxley;

(b) The City previously determined that it was necessary and desirable to make certain capital improvements to its sanitary sewer system, as it may be constituted from time to time (the “**System**”), consisting of the upgrade and repair of the its existing treatment plant and other costs associated with the sewer project such as engineering, land, and legal services located on property located within the City (the “**Project**”);

(c) The City obtained a commitment letter dated March 7, 2019 from the United States Department of Agriculture (herein called the “**USDA**”) for the sale by the City and the purchase by the USDA of a Subordinate Sewer Revenue Bond (herein called the “**USDA Financing**”) to be issued for the purpose of financing the Project (including certain costs of issuance related thereto);

(d) The City has complied with the rules and regulations of the USDA with respect to the USDA Financing, including adoption of Loan Resolution No. 2019-03, adopted by the Mayor and the City Council on March 11, 2019 (the “**Preliminary Resolution**”);

(e) Due to timing constraints regarding acquisition and construction of the Project and the completion of the USDA Financing, the Council deemed it necessary, desirable and in the best interest of the City to make interim provision for payment of the costs of construction of the Project, and therefore, pursuant to

authority to do so approved by the Council at a regular meeting of the Council held on February 10, 2020 and in the applicable provisions of the laws of Alabama, the City previously established a line of credit with from Community Bank (the "**Bank**") in the principal amount of \$4,825,000, and in evidence of the money so borrowed, issued and delivered to the Bank a promissory note in the amount of up to \$4,825,000, which promissory note has been renewed to extend the term thereof (herein called the "**Community Bank Note**") having a maturity date, as extended, of March 17, 2023, for the purpose of providing temporary financing for the Project during its construction phase and prior to completion of the USDA Financing;

(f) The City has heretofore issued pursuant to Ordinance No. 2011-17 adopted by the Council on July 28, 2011(the "**2011 Ordinance**") and that certain Trust Indenture, dated as of August 1, 2011 by and between the City and Regions Bank, as Trustee (the "**Indenture**") its (1) Town of Loxley Utility Revenue Refunding Warrants, Series 2011A, originally issued in the principal amount of \$3,355,000 (the "**Series 2011A Warrants**") to refund the Town of Loxley's Utility Revenue Warrants, Series 2003 and (2) Town of Loxley Taxable Utility Revenue Refunding Warrants, Series 2011B, originally issued in the principal amount of \$1,355,000 (the "**Series 2011B Warrants**") to refund the Town of Loxley's Revenue Warrants, Series 2005-B;

(g) By a resolution previously adopted, the City has called all the outstanding Series 2011A Warrants and Series 2011B Warrants for redemption and prepayment;

(h) The City has heretofore issued pursuant to Ordinance No. 2014-05 adopted by the Council on March 31, 2014 (the "**2014 Ordinance**") and that certain First Supplemental Trust Indenture, dated as of April 1, 2014 (the "**First Supplemental Indenture**") its Town of Loxley Utility Revenue Refunding Warrants, Series 2014, originally issued in the principal amount of \$1,180,000 (the "**Series 2014 Warrants**") to refund the Town of Loxley's General Obligation Warrants, Series 2005-A;

(i) As of the maturity date of the Community Bank Note, construction of the Project was not complete, and therefore the Council has deemed it necessary, advisable and in the interest of the public that the City (i) borrow up to \$4,825,000 for the purposes of prepayment of indebtedness evidenced by the Community Bank Note, the refunding of the Series 2011A Warrants and the Series 2011B Warrants and the completion of the Project;

(j) As of the date hereof, approximately \$4,461,953,42 of the proceeds from the Community Bank Note have been drawn against the line of credit and disbursed for the purposes of construction of the Project as approved by the Council on February 10, 2020;

(k) The City is not in default in the payment of the principal of and the interest on the Series 2011A Warrants, the Series 2011B Warrants or the Series 2014 Warrants or under the Indenture or the First Supplemental Indenture;

(l) The Council deems it necessary, desirable and in the best interest of the City that the City (i) close on the permanent USDA Financing; (ii) borrow up to \$4,825,000 from the USDA for the purposes of repaying the indebtedness evidenced by the Community Bank Note, completing the Project, refunding the Series 2011A Warrants and Series 2011B Warrants and paying certain costs of issuance for such borrowing; and (iii) issue to the USDA a bond hereinafter authorized as evidence of its obligations;

(m) It is necessary, advisable and in the interest of the public that the City issue its Subordinate Sewer Revenue Bond, Series 2023 (the “**Series 2023 Bond**”) to refund the Series 2011A Warrants and the Series 2011B Warrants, to prepay and redeem the Community Bank Note, to pay a portion of the costs to complete the Project and to pay costs of issuance of the Series 2023 Bond.

Section 2. Definitions. The following words and phrases and other evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations as used herein:

“**Act**” has the meaning assigned to the term in the Series 2023 Bond.

“**Additional Parity Lien Obligations**” has the meaning assigned to the term in Section 10 hereof.

“**Annual Payment Date**” means March 17 of each year, commencing in 2024 and continuing through the final year of maturity of the Series 2023 bond, or if any such date is not a Business Day, the next succeeding Business Day.

“**Authorizing Ordinance**” or “**Ordinance**” means this ordinance, in the final form adopted by the Mayor and the City Council of the City of Loxley, Alabama.

“**Bank**” has the meaning assigned to the term in Section I hereof.

“Bond Fund” has the meaning assigned to the term in Section 8 hereof.

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which the City is required or authorized to be closed under general law or regulation applicable to the City.

“City” has the meaning assigned to the term in Section 1 hereof.

“Community Bank Note” has the meaning assigned to the term in Section 1 hereof.

“Council” has the meaning assigned to the term in Section 1 hereof.

“Debt Service Reserve Fund” has the meaning assigned to the term in Section 8 hereof.

“Depository” has the meaning assigned to the term in Section 8 hereof.

“Event of Default” has the meaning assigned to the term in Section 15 hereof.

“Funds” means collectively, the Bond Fund, the Debt Service Reserve Fund, the Project Fund and the USDA RD Short Lived Asset Account.

“Funds Transfer Date” means the calendar day of each month immediately preceding the day of the month on which the Issue Date falls. For purposes of illustration only, if the Issue Date is March 15, 2023, the Funds Transfer Date is the 14th of each month.

“Holder” means the registered owner of the Series 2023 Bond.

“Indenture” has the meaning assigned to the term in the Series 2023 Bond, the form of which is included in Section 4 hereof.

“Issue Date” means the date the Series 2023 Bond is issued, as shown on the face thereof.

“Net Sewer System Revenues” means all revenues derived from the operation of the System remaining after payment of all Operating Expenses.

“Operating Expenses” means, for the applicable period or periods, all reasonable and necessary costs of operating, repairing, maintaining and insuring the System, engineering fees, legal fees and accounting fees for services rendered, and all other items that are properly chargeable, by good accounting practice, as an expense of administration, operation, maintenance and repair of the System (not including, however, depreciation, interest or any expenses for items properly chargeable by good accounting practice to fixed capital account).

“Preliminary Resolution” has the meaning assigned to the term in Section 1 hereof.

“**Prior Lien Obligations**” has the meaning assigned to the term in the Series 2023 Bond, the form of which is included in Section 4 hereof.

“**Project**” has the meaning assigned to the term in Section 1 hereof.

“**Project Fund**” has the meaning assigned to the term in Section 8.

“**Series 2023 Bond**” has the meaning assigned to the term in Section 3 hereof.

“**System**” means the City’s sanitary sewer system.

“**USDA**” has the meaning assigned to the term in Section 1 hereof.

“**USDA Financing**” has the meaning assigned to the term in Section 1 hereof.

“**USDA RD Short Lived Asset Account**” has the meaning assigned to the term in Section 8 hereof.

Section 3. Authorization. Pursuant to authority to do so contained in the applicable provisions of the laws of Alabama, and for the purpose of providing the funds necessary to refund the Series 2011A Warrants and the Series 2011B Warrants, to prepay and redeem the Community Bank Note, to pay a portion of the costs to complete the Project, to pay the costs of issuance thereof and for no other purpose, the City is hereby authorized to borrow from the USDA the principal amount of \$4,825,000, and, in evidence of the money so borrowed, is authorized to issue and deliver to the USDA its Subordinate Sewer Revenue Bond, Series 2023 (herein called the “**Series 2023 Bond**”). The Series 2023 Bond shall be dated the date of its delivery and shall mature, bear interest and contain and be subject to the terms and conditions set forth in this Ordinance and in the Series 2023 Bond.

Section 4. Form of Series 2023 Bond. The Series 2023 Bond shall be in substantially the following form:

**UNITED STATES OF AMERICA
STATE OF ALABAMA
CITY OF LOXLEY
SUBORDINATE SEWER REVENUE BOND
SERIES 2023**

ISSUE DATE:	MATURITY DATE:	PRINCIPAL AMOUNT:
_____, 2023	_____, 2063	\$4,825,000

For value received, the CITY OF LOXLEY, ALABAMA, a municipal corporation under the laws of the State of Alabama (the “City”) will pay, solely out of the revenues hereinafter described and from the Bond Fund referred to below, to

UNITED STATES DEPARTMENT OF AGRICULTURE (herein called the “USDA”), or registered permitted assigns, the principal sum of

FOUR MILLION EIGHT HUNDRED TWENTY-FIVE THOUSAND
AND NO/100 DOLLARS

together with interest on the principal sum, at the rate of 2.25% per annum. The principal and interest on this Bond shall be payable in forty (40) equal annual installments of principal and interest in the amount of \$184,219.00, which annual payments shall commence on the first anniversary of the Issue Date stated above and continue on the anniversary of the Issue Date each year thereafter to and including the Maturity Date stated above; provided, however, that the final installment, due on the Maturity Date, shall in any event be in an amount equal to the entire unpaid principal hereof and interest accrued hereon.

All sums (except the final payment), including principal and interest on this Bond shall be payable in immediately available funds to the Holder hereof at its address as it appears in the registration books kept by the City’s Treasurer, as Bond registrar; provided, however, such payment may be made by wire transfer, ACH payment, or other electronic transfer in accordance with written instructions provided by the Holder from time to time. Final payment of principal and interest on this Bond shall be made upon presentation of this Bond. Such payments of principal and interest shall be deemed timely made if electronically transferred or otherwise paid in accordance with the written instructions of the registered owner on the payment date or, if such payment date is not a date on which banks are open for business in the State of Alabama, on the next such day next following such payment date. Both the principal hereof and the interest hereon are payable in lawful money of the United States of America.

THE PRINCIPAL OF AND INTEREST ON THIS BOND ARE EXEMPTED FROM ANY AND ALL STATE, COUNTY AND MUNICIPAL OR OTHER TAXATION WHATSOEVER UNDER THE LAWS OF THE STATE OF ALABAMA.

This Bond has been issued pursuant to the applicable provisions of the Constitution and laws of the State of Alabama, including particularly Amendment 107 to the Constitution of Alabama 1901 (Section 222.01 of the Constitution of Alabama 2022), Article 5 of Chapter 81 of Title 11 of the Code of Alabama (the “**Act**”), the Preliminary Resolution and an ordinance adopted by the Mayor and the City Council of the City of Loxley on March 13, 2023 (the “**Authorizing Ordinance**”) for the purposes for which bonds are authorized to be issued under the Act. Capitalized terms not otherwise defined in this Bond have the meaning assigned in the Authorizing Ordinance.

This Bond is subject to prepayment at any time, in whole or in part, upon prior notice to the Holder, at and for a redemption price equal to the principal amount redeemed plus accrued interest to the date fixed for redemption.

This Bond and interest thereon are made payable solely out of Net Sewer System Revenues. The indebtedness evidenced and ordered paid by this Bond is and shall be a limited obligation of the City for payment of the principal of and the interest on which the Net Sewer System Revenues are irrevocably pledged. Said pledge is (i) subject to the prior pledge of the said Net Sewer System Revenues made in that certain Trust Indenture dated as of August 1, 2011 (as previously amended and supplemented, or hereinafter supplemented pursuant to the terms thereof, the “**Indenture**”) between the City and Regions Bank, as trustee, as a portion of the “Net System Revenues” pledged therein for the benefit of all warrants heretofore or hereafter issued by the City pursuant to the Indenture and any similar pledge hereafter made in a trust indenture entered into by the City pursuant to which warrants may hereafter be issued to refund warrants issued under the Indenture (collectively, “**Prior Lien Obligations**”), (ii) on parity of lien with the pledge of Net Sewer System Revenues for any Additional Parity Lien Obligations hereafter issued, provided that one or both of the conditions set forth in Section 10(c) of the Authorizing Ordinance has been satisfied, and (iii) senior to any pledge of Net Sewer System Revenues made by the City for any indebtedness other than the pledges described in (i) through (ii) of this sentence.

This Bond and the interest hereon do not constitute a charge on the general credit or revenues of the City but are payable solely out of Net Sewer System Revenues as aforesaid. This Bond and the interest hereon do not constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation. The general faith and credit of the City are not pledged to the payment of the principal of or interest on this Bond. The City reserves the right to issue additional debt obligations from time to time secured by a pledge of the Net Sewer System Revenues on parity with the pledge securing this Bond provided that one or both of the conditions described in Section 10(c) of the Authorizing Ordinance is met.

Pursuant to the Authorizing Ordinance, the City has established a special fund for the payment of debt service on this Bond (the “**Bond Fund**”) that will be held by the City Clerk, as custodian. The City has obligated itself to pay or cause to be paid into the Bond Fund sums sufficient to provide for the payment of debt service on this Bond as the same becomes due and payable, but solely to the extent such sums are available for payment out of Net Sewer System Revenues and subject to the prior parity pledges of said Net Sewer System Revenues as aforesaid.

This Bond is transferable only by a transfer duly executed by the person in whose name this Bond is registered on the registry books of the Treasurer. The USDA, and any subsequent Holder, by receiving or accepting this Bond, shall consent and agree and shall be estopped to deny that this Bond may be transferred only in accordance with the provisions of the Authorizing Ordinance.

It is hereby recited, certified and declared that the obligation evidenced and ordered paid by this Bond is lawfully due, without condition, abatement or offset of any description; that this Bond has been registered in the manner provided by law; that all conditions, acts and things required by the Constitution and the laws of the State of Alabama to happen, exist or be performed precedent to or in the issuance of this Bond and the adoption of the Authorizing Ordinance have happened, do exist and have been performed as so required.

Execution by the Treasurer of her registration certificate hereon is essential to the validity hereof.

IN WITNESS WHEREOF, the City has caused this Bond to be executed on its behalf by its Mayor and by the City Clerk and has caused the seal of the City to be impressed hereon, and has caused this Bond to be dated the ____ day of March, 2023.

CITY OF LOXLEY

(SEAL)

By: _____
Mayor

ATTEST:

City Clerk

Registration Certificate

Date of Registration: [_____, 2023]

This Bond was registered by me as a claim against the revenues referred to herein on the date hereinabove set forth.

CITY OF LOXLEY

By: _____
Its Treasurer

Section 5. Execution. The Mayor of the City is hereby authorized and directed to execute the Series 2023 Bond, in the name and on behalf of the City, and the City Clerk is hereby authorized and directed to affix the official seal of the City to the Series 2023 Bond and to attest the same by signing.

Section 6. Delivery of Bond and Authorization of Documents. The Series 2023 Bond, duly executed as aforesaid, shall be sold and delivered at private sale to the USDA upon payment to the City of the principal amount thereunder. The Mayor, the City Clerk and the Treasurer of the City, or any of them, are hereby authorized and directed to effect such delivery and in connection therewith, to deliver such closing papers, containing such representations as are required to demonstrate the legality of the Series 2023 Bond being delivered, the validity of the pledge to the payment thereof, and the absence of any pending or threatened litigation with respect thereto.

Section 7. Payment of Closing Costs. To the extent funds are not available from the Series 2023 Bond proceeds to pay any unpaid interest accrued under the Community Bank Note, costs of issuance of the Series 2023 Bond, or other lawful amounts necessary to cause the full and final repayment and satisfaction of all amounts outstanding under the Community Bank Notes, the Series 2011A Warrants, and Series 2011B Warrants and issuance of the Series 2023 Bond, the City shall pay such amounts from funds of the City other than the Series 2023 Bond proceeds.

Section 8. Deposit and Application of Series 2023 Bond Proceeds; Project Funds. The proceeds from the sale of the Series 2023 Bond shall be used and applied as follows:

- (a) \$4,461,953,42 of the proceeds from the sale of the Series 2023 Bond shall be applied to repayment of all outstanding principal indebtedness evidenced by the Community Bank Note. The City shall also remit and pay to the Bank from

proceeds from the sale of the Series 2023 Bond such amounts as shall be necessary to repay any accrued interest on the Community Bank Note through the date of repayment and any other amounts necessary to cause full and final repayment and satisfaction of all amounts outstanding under the Community Bank Note.

(b) \$321,493.33 of the proceeds from the sale of the Series 2023 Bond shall be deposited in the Warrant Fund with respect to the Series 2011A Warrants and applied, together with any amounts currently on deposit in the Series 2011A account of the Reserve Fund established under the Indenture, for payment of the principal and interest on the Series 2011A Warrants upon redemption on or about April 19, 2023.

(c) \$140,933.33 of the proceeds from the sale of the Series 2023 Bond shall be deposited in the Warrant Fund with respect to the Series 2011B Warrants and applied, together with any amounts currently on deposit in the Series 2011B account of the Reserve Fund established under the Indenture, for payment of the principal and interest on the Series 2011B Warrants upon redemption on or about April 19, 2023.

(d) The proceeds from the sale of the Series 2023 Bond not applied in accordance with Section 8(a)(b) and (c) shall be applied in the following order of priority: (i) first, to pay allowable costs of issuance related to the Series 2023 Bond; and (ii) second, any remaining Bond proceeds shall be deposited in the Project Fund.

(e) *Bond Fund.* There is hereby created a special trust fund of the City to be held in a segregated account at the Depository and designated "City of Loxley Bond Fund, Series 2023" (the "**Bond Fund**"). The monies in the Bond Fund shall be used to pay the principal of and interest on the Series 2023 Bond as the same shall become due and payable. Beginning on the Fund Transfer Date in April 2023 and continuing each month through and including the Fund Transfer Date in March 2063, there shall be paid into the Bond Fund, on or before the Fund Transfer Date of each month, an amount equal to \$15,351.59 or such lesser amount as may be required to cause the balance of money in the Bond Fund to equal the next annual installment of principal and interest on the Bond.

If at any time on or after the Fund Transfer Date in April 2062 the total balance of the Bond Fund and the Debt Service Reserve Fund is equal to or greater than the outstanding balance of principal and interest due on the Bond at the Maturity

Date, then the City has no obligation to make the monthly payment into the Bond Fund.

(f) *Debt Service Reserve Fund.* There is hereby created a special trust fund of the City to be held in a segregated account at the Depository and designated the “City of Loxley Debt Service Reserve Fund, Series 2023” (the “**Debt Service Reserve Fund**”) which shall be used solely for the purposes set forth in this Section 8(f). Beginning on the Fund Transfer Date in April 2023 and continuing on the Fund Transfer Date each month through and including the Fund Transfer Date in March 2063, the City shall deposit in the Debt Service Reserve Fund the lesser of \$1,535.16 or the amount needed to cause the funds held in the Debt Service Reserve Fund to equal \$184,219.00.

The City shall withdraw funds from the Debt Service Reserve Fund and deposit them in the Bond Fund to pay debt service payments due on the Series 2023 Bond to the extent sufficient funds are not otherwise available for deposit in and payment from the Bond Fund on the date such debt service payments are due. With the prior written approval of the USDA, the City may also withdraw funds from the Debt Service Reserve Fund for: (i) paying the cost of emergency maintenance or repairing or replacing any damage to the Project caused by catastrophe; (ii) repairing or replacing Project assets having a useful life that does not extend beyond the final payment date of the Series 2023 Bond; or (c) making expansions or improvements to the Project.

Provided no Event of Default exists as of such date, the City may withdraw any funds remaining in the Debt Service Reserve Fund and deposit them in the Bond Fund to pay the final payment installment due on the Series 2023 Bond.

(g) *USDA RD Short Lived Asset Account.* There is hereby created a special trust fund of the City to be held in a segregated account at the Depository and designated the “City of Loxley” USDA RD Short Lived Asset Account, Series 2023” (the “**USDA RD Short Lived Asset Account**”) which shall be used solely for the purposes set forth in this Section 8(g). Beginning on the Fund Transfer Date in April 2023 and continuing monthly on each Fund Transfer Date until the Holder notifies the City in writing that additional funding of the USDA RD Short Lived Asset Account is no longer necessary, the City shall deposit \$1,205.59 in the USDA RD Short Lived Asset Account. If at any time after the USDA suspends this monthly funding requirement for the USDA RD Short Lived Asset Account the USDA reinstates this requirement, the City shall resume making its monthly deposit in accordance with this Section 8(f) unless and until the USDA again suspends this requirement.

The City may withdraw funds from the USDA RD Short Lived Asset Account and deposit them in the Bond Fund to pay debt service payments due on the Series 2023 Bond to the extent sufficient funds are not otherwise available for deposit in and payment from the Bond Fund or the Debt Service Reserve Fund on the date such debt service payments are due. With the prior written approval of the USDA, the City may withdraw funds from the USDA RD Short Lived Asset Account for: (i) paying the cost of emergency maintenance and repairing or replacing any damage to the Project caused by catastrophe; (ii) repairing or replacing Project assets having a useful life that does not extend beyond the final payment date of the Series 2023 Bond; (c) making expansions or improvements to the Project.

Provided no Event of Default exists as of such date, the City may withdraw any funds remaining in the USDA RD Short Lived Asset Account and deposit them in the Bond Fund to pay the final payment installment due on the Series 2023 Bond.

(h) *Project Fund.* There is hereby created a separate fund or account of the City to be held as a separate account at the Depository and designated the “City of Loxley 2023 Project Fund (the “**Project Fund**”)), which shall be used for the payment of the remaining costs of the Project.

(i) The City Clerk shall be and remain the custodian and disbursing agent for the Project Fund, the Bond Fund, the Debt Service Reserve Fund, and the USDA RD Short Lived Asset Account. The Bond Fund, Debt Service Reserve Fund, and USDA RD Short Lived Asset Account shall be and at all times remain public funds impressed with a trust for the purposes for which such Funds are herein created. The custodian shall at all times keep the monies on deposit with it in the Funds continuously secured for the benefit of the City and the Holder of the Series 2023 Bond.

(j) The City hereby designates United Bank as the depository for the Project Fund, the Bond Fund, the Debt Service Reserve Fund, and the USDA RD Short Lived Asset Account. In the event that the City elects to change the depository institution or the Bank should at any time decline to act as such depository, should resign as such depository, should cease to be a member of the Federal Deposit Insurance Corporation (or any agency which may succeed to its duties), or should cease to be duly qualified and doing business within the State of Alabama, then the Mayor and the City Council shall by resolution designate a successor to such depository and notify the Holder in writing of such change; provided, that, any such successor depository shall be and remain a member of the Federal Deposit Insurance Corporation (or of any agency which may succeed to its duties) and shall be and

remain duly qualified and doing business in the State of Alabama (the initial depository appointed above or such successor depository, the “**Depository**”).

(k) Monies held in the Debt Service Reserve Fund and the USDA RD Short Lived Asset Account may be invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the System. Monies held in the Project Fund may be invested in any investments or deposits which constitute permissible investments for the City.

(l) Payments and disbursements from the Project Fund, the Bond Fund, the Debt Service Reserve Fund, and the USDA RD Short Lived Asset Account may be authorized by the Mayor, the City Clerk, or any other person designated in writing by the Mayor or the City Clerk from time to time.

(m) Any amounts remaining in the Bond Fund, Debt Service Reserve Fund, and the USDA RD Short Lived Asset Account after full and final payment of all indebtedness and obligations evidenced by the Series 2023 Bond are released from any restrictions imposed by the Series 2023 Bond or this Ordinance.

Section 9. Source of Payment. The indebtedness evidenced and ordered paid by the Series 2023 Bond is made payable solely out of Net Sewer System Revenues. The Series 2023 Bond and the indebtedness evidenced and ordered paid thereby shall not constitute a debt of the City and are not general obligations of the City, but are special and limited obligations in accordance with the terms of the Series 2023 Bond and the terms of this Ordinance.

Section 10. Limited Obligation and Pledge.

(a) The Series 2023 Bond and interest thereon are made payable solely out of Net Sewer System Revenues. The indebtedness evidenced and ordered paid by the Series 2023 Bond is and shall be a limited obligation of the City for payment of the principal of and the interest for which the Net Sewer System Revenues are irrevocably pledged. Said pledge is (i) subject to the prior pledge of the said Net Sewer System Revenues made in the Indenture as a portion of the “Net System Revenues” pledged therein for the benefit of all warrants heretofore or hereafter issued by the City pursuant to the Indenture, and any similar pledge hereafter made for Prior Lien Obligations, (ii) on parity of lien with the pledge of Net Sewer System Revenues for any Additional Parity Lien Obligations hereafter issued in accordance with the provisions of Section 10(c) of this Ordinance, and (iii) senior to any pledge of Net Sewer System Revenues made by the City for any indebtedness other than the pledges described in (i) and (ii) of this sentence. There are hereby

appropriated and ordered segregated, set apart and used for payment of such principal and interest, as the same shall respectively become due, so much as may be necessary for such purpose of the Net Sewer System Revenues, subject to the prior pledge thereof pursuant to the Indenture.

(b) The City represents, warrants, and agrees that, upon delivery of the Series 2023 Bond: (i) there will be no outstanding agreement or pledge with respect to the said Net Sewer System Revenues other than the agreements and pledge that are contained in the Indenture, and the agreements and pledge contained herein, and (ii) the agreements and pledge respecting the Net Sewer System Revenues herein made shall be and remain prior and superior to any and all pledges and agreements respecting the said Net Sewer System Revenues that may hereafter be made by the City other than any agreement and pledge made in support of Prior Lien Obligations or Additional Parity Lien Obligations. The City also warrants and represents that it has the rightful power and lawful authority to pledge the Net Sewer System Revenues as provided in this Ordinance.

(c) The City will not issue any additional obligations payable from the Net Sewer System Revenues on parity of lien with the pledge of the Net Sewer System Revenues for the benefit of the Series 2023 Bond (“**Additional Parity Lien Obligations**”) unless the City has first satisfied one of the following conditions:

(i) The City has obtained the written consent of the Holder to the issuance of such Additional Parity Lien Obligations, or

(ii) Not less than twenty (20) days prior to the issuance of any such Additional Parity Lien Obligations, the City has furnished to the Holder a certificate of an independent auditor certifying that the Net Sewer System Revenues for the fiscal year of the City preceding the fiscal year in which the Additional Parity Lien Obligations are to be issued was not less than 125% of the average annual debt service requirements, including required reserve payments, on (A) all indebtedness of the City then outstanding that is secured by a pledge of the Net Sewer System Revenues on parity with the pledge securing the Series 2023 Bond, plus (B) the Additional Parity Lien Obligations then proposed to be issued.

Section 11. Certain Covenants and Agreements. Until the principal of and interest on the Series 2023 Bond shall have been paid in full, or provision shall have been made for such payment, the City hereby covenants and agrees as follows:

(a) The City shall submit to USDA audit reports and additional financial information as follows:

(i) Each fiscal year in which (A) the City receives \$750,000 or more in federal assistance and/or (B) the outstanding indebtedness evidenced by the Series 2023 Bond is \$750,000 or more, the City shall submit the data collection form and reporting package specified in Section 200.512 of 2 CFR Part 200, Subpart F or any successor regulation thereof, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the fiscal year. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day. The City shall prepare and submit the data collection form and the reporting package in accordance with OMB Circular A-133 or any successor guidance or regulation thereof. The City shall make copies of these materials available for public inspection, unless restricted by applicable law.

(ii) If in any fiscal year (A) the City receives less than \$750,000 in federal assistance and (B) the outstanding indebtedness evidenced by the Series 2023 Bond is less than \$750,000, in lieu of the items required by Section 11(a)(i) above, the City may submit to the USDA audited or unaudited annual financial statements consisting of a verification of the City's balance sheet and statement of income and expense within sixty (60) days after the end of the fiscal year. If such financial statements are unaudited, the City shall also submit a certification by the City's City Clerk verifying that the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles.

(iii) Prior to the beginning of each fiscal year, the City shall submit to the USDA two copies of Form RD 442-2, "Statement of Budget, Income, and Equity," including both Schedule 1 and Schedule 2 thereof, completed for the System for such fiscal year in accordance with USDA form instructions.

(iv) Twenty (20) days after the end of each of the first three quarters of each fiscal year, the City shall submit to the USDA two copies of Form RD 442-2, "Statement of Budget, Income, and Equity," including both Schedule 1 and Schedule 2 thereof, with all information furnished on Schedule 1 and completed in accordance with USDA form instructions.

(v) For the fourth quarter of each fiscal year, the City shall submit (A) two copies of Form RD 442-2, "Statement of Budget, Income, and Equity," including both Schedule 1 and Schedule 2 thereof, with all information furnished on Schedule 1 and completed in accordance with USDA form instructions; (B) a list of the City Council, indicating the officers

and their term of office; (C) a certification of the balances held in the Debt Service Reserve Fund and the USDA RD Short Lived Asset Account as of fiscal year end signed by the City's auditor, if audited annual financial statements are submitted to the USDA, or the City's City Clerk, if unaudited financial statements are submitted pursuant to Section 11(a)(ii) above; (D) a corrective action plan, if required by Section 11(a)(vi) below; and (E) a copy of the minutes of the City Council meeting approving the City's annual financial statements and auditor's report, if applicable. The City shall submit these materials to the USDA within ninety (90) days after the end of the fiscal year if audited annual financial statements are being submitted to the USDA or within sixty (60) days after the end of the fiscal year if unaudited financial statements are being submitted pursuant to Section 11(a)(ii) above.

(vi) For any fiscal year in which the Debt Service Reserve Fund balance at year end is less than the amount required by Section 8(d) above, the City shall prepare and submit to the USDA with its annual reports a twelve-month budget for the System and plan to correct the cash shortfall.

The USDA may, in its sole discretion, waive any of the foregoing requirements upon request of the City.

(b) The City shall retain all records, books, and supporting material for three (3) years after the issuance of the reports and financial statements required by Section 11(a).

(c) Beginning in fiscal year 2024 and continuing for each fiscal year in which the indebtedness evidenced by the Series 2023 Bond remains outstanding unless and until the USDA notifies the City in writing that this requirement is suspended, the Net Sewer System Revenues for each fiscal quarter shall be not less than 125% of the City's debt service due in such fiscal quarter on all indebtedness of the City then outstanding that is secured by a pledge of the Net Sewer System Revenues on parity with the pledge thereof securing the Series 2023 Bond, including required reserve payments due in such fiscal quarter (the "DSCR"). If the DSCR is not satisfied in any fiscal quarter, then an independent management consultant shall be engaged at the expense of the City to prepare a fiscal strategy report containing recommendations as to changes in the operating policies for the System designed to maintain such DSCR. The City shall submit a copy of this report to the USDA no later than 90 days after any fiscal quarter in which the DSCR is not satisfied. The City shall promptly implement such recommendations to the extent permitted by law, applicable contractual limitations, and the instruments governing the indebtedness of the City then outstanding that is secured by or payable from the Net Sewer System

Revenues. No Event of Default shall occur if the City follows such recommendations (to the fullest extent permitted) notwithstanding that such DSCR shall not subsequently be reattained, but the City shall continue to be obligated to employ an independent management consultant for such purpose until such DSCR shall be reattained. If the USDA notifies that this DSCR requirement is suspended or modified to a less restrictive requirement, the City shall not be obligated to comply with this Section 11(c) during the period for which this requirement is suspended or modified, but during such period the City shall comply with any less restrictive requirement imposed by the USDA.

(d) The City shall make and maintain such rates, fees, and charges for services supplied from the System and will make collections from the users thereof so that the revenues from the System available for debt service will be sufficient to make timely payment of the debt service on all indebtedness of the City secured by or payable from Net Sewer System Revenues, subject to any legal or contractual limitations on the City's ability to make, maintain, and revise such rates and charges. The City shall use commercially reasonable efforts to obtain approvals of any regulatory or supervisory authority or third parties required to implement any rates, fees, and charges or revisions thereto necessary to satisfy this covenant.

(e) The City shall comply with the obligations and agreements set forth in the Preliminary Resolution, except to the extent such obligations and agreements are amended and superseded by this Ordinance or applicable law.

(f) The City will at all times carry the insurance on the System and fidelity bonds required to be carried by the Indenture. The City agrees that proceeds of any insurance will be applied in accordance with the Indenture.

(g) The City will not sell, transfer, lease or otherwise encumber the Project or any portion thereof, or interest therein, or permit others to do so without the prior written consent of the USDA; provided, however, the City may sell, transfer or dispose of personal property included in the Project that is no longer used or useful in operation of the Project and that does not materially affect the value of the Project or performance of the System. The City shall not permit any free use or occupancy of the Project by persons or entities other than the City, its political subdivisions, and their employees, independent contractors, and agents.

(h) System revenues accumulated over and above that needed to meet the requirements of debt service (including the mandatory or optional funding of

reserves and redemption funds), operation and maintenance of the System and establishment of adequate reserves may only be retained by the City or used to make prepayments of debt service. The City shall not use System revenues to pay any expenses which are not related to the Project or the System.

(i) The City shall provide adequate service to all persons within the System service areas who can feasibly and legally be served and obtain the USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the City.

None of the foregoing covenants in this Section 11 shall be construed as requiring the City to expend any funds other than the Net Sewer System Revenues.

Section 12. Contract. The terms, provisions and conditions set forth in this Ordinance constitute a contract between the City and the Holder of the Series 2023 Bond and shall remain in effect until the principal of and interest on the Series 2023 Bond shall have been paid in full. No contractual or other obligation herein undertaken or imposed upon the City shall be construed as imposing any pecuniary obligation, other than to apply the revenues of the System as herein provided.

Section 13. Severable. The provisions of this Ordinance are severable. In the event that any one or more of the provisions hereof or of the Series 2023 Bond shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect the other provisions of this Ordinance or the Series 2023 Bond, and this Ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

Section 14. Consents/Waivers/Agreements. Any owner or Holder of the Series 2023 Bond shall be bound by any consent, waiver or agreement made by any prior Holder or owner of the Series 2023 Bond.

Section 15. Event of Default. The following events shall be events of default hereunder, and the terms "**Event of Default**" or "**Events of Default**" mean, whenever they are used herein, one or more of the following events:

(a) Failure to pay any installment of principal of the Series 2023 Bond when and as the same becomes due and payable and such default shall have continued for a period of 15 days;

(b) Failure to pay any installment on interest on the Series 2023 Bond when and as the same shall become due and payable and such default shall have continued for a period of 15 days;

(c) Failure by the City to perform any of the obligations on its part to be performed or duly to observe any covenant, condition or agreement on the part of the City to be observed as required herein, and such failure shall have continued for a period of 60 days after a written notice, specifying such failure and requiring the same to be remedied, shall have been given to the City by the Holder; and

(d) The occurrence of an event of default, as therein defined, under the Indenture (or under any future instrument entered into by the City pursuant to which indebtedness issued under the Indenture is to be refunded) and the expiration of the applicable grace period, if any, specified therein.

Whenever any Event of Default shall have happened and be subsisting, and subject to any restrictions imposed by applicable law and by the instruments governing the indebtedness of the City then outstanding that is secured by or payable from the Net Sewer System Revenues, the Holder may:

(1) by mandamus or other suit, action or proceedings, at law or in equity, enforce and compel performance of all agreements of the City herein contained, including the collection and proper segregation of the revenues of the System, and the proper application thereof, and require the City to carry out the other covenants and agreements herein and in the Series 2023 Bond set forth and to perform its duties hereunder and under applicable law;

(2) by action or suit in equity, require the City to account as if it were the trustee of an express trust for the Holder of the Series 2023 Bond; and

(3) by action or suit in equity enjoin any act which may be unlawful or a violation of the rights of the Holder; and shall be entitled as a matter of strict right to the appointment of a receiver for the System, which receiver may enter and take possession of the System or any part or parts thereof, including all property, land, property rights, easements, water, franchises, books, records, papers, cash, choses in action, accounts receivable, funds, deposits, accounts and other adjuncts of the System, and such receiver may operate and maintain the System, fix and collect all rates and charges, and receive all revenues thereafter arising therefrom in the same manner as the City itself might do, and shall deposit all moneys in a separate account or accounts and apply the same in accordance with the obligations of the City and as the court shall direct.

Section 16. Amendment of Prior Acts. This Ordinance amends and supersedes the Preliminary Resolution. To the extent the provisions of this Ordinance and the Preliminary Resolution conflict or are found to be inconsistent, the provisions of this Ordinance control.

Section 17. Determinations Regarding Bonds.

(a) Pursuant to the Indenture and in connection with the Prior Lien Obligations, the City previously established the “gross revenue account” and an “operation and maintenance fund” required by Ala. Code § 11-81-181 for the deposit of System gross revenues and the payment out of

said gross revenues sums sufficient to provide for the payment of expenses of the administration and operation of and such expenses for maintenance as may be necessary to preserve in good repair the System. Such funds are held and administered in accordance with the terms of the Indenture. The City shall comply with the terms of the Indenture and applicable law with respect to the deposit of gross revenues of the System and the application of gross revenues into separate and special funds, including the application of Net Sewer System Revenues in accordance with this Section 8. The current depository for accounts and funds held under the Indenture is Regions Bank. The City from time to time may designate a new depository for such accounts and funds in accordance with the terms of the Indenture; provided, that, any such successor depository shall be and remain a member of the Federal Deposit Insurance Corporation (or of any agency which may succeed to its duties) and shall be and remain duly qualified and doing business in the State of Alabama.

(b) The City has made the following determinations with respect to the Series 2023 Bond: (A) the amounts to be deposited the Debt Service Reserve Fund and the USDA RD Short Lived Asset Account will constitute reasonable reserves for the purposes for which such Funds are established; (B) the periods of time within which the reserves to be held in the Debt Service Reserve Fund and the USDA RD Short Lived Asset Account will be built up constitute reasonable periods of time for accrual of such reserves; (C) the useful life of the Project is equal to or greater than 40 years; and (D) the System is operated on a fiscal year basis, with such fiscal year beginning on October 1 and ending September 30 of the following year.

Councilmember Wilson moved that the foregoing resolution be adopted and spread upon the minutes of this meeting, which motion was seconded by Councilmember McCall, and, upon the said motion being put to vote, the following vote was recorded:

<u>YEAS</u>	<u>NAYS</u>
Richard Teal	
Richard Lee Wilson	
Jeffrey T. Knight	
Katherine Q. Breeden	
Chris McCall	
Kasey Childress	

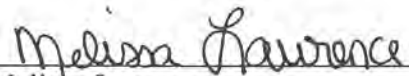
The Chairman thereupon announced that the motion for adoption of the said resolution had been unanimously carried.

* * * * *

There being no further business, the meeting was, on motion duly made, seconded and unanimously carried, adjourned.

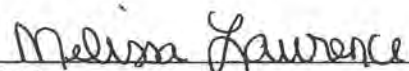



Richard Teal
Mayor


Melissa Lawrence
City Clerk/Treasurer

CERTIFICATION OF POSTING

I, Melissa Lawrence, City Clerk/Treasurer of the City of Loxley, Alabama hereby certify that the above noted ordinance was published by posting copies thereof in the Loxley Post Office, Loxley Public Library, Loxley Police Station and Loxley Town Hall beginning March 17, 2023 and took effect five (5) days thereafter.


Melissa Lawrence
City Clerk/Treasurer