

RESOLUTION 2014-05

A RESOLUTION AUTHORIZING THE ISSUANCE, EXECUTION, SALE, AND DELIVERY OF A GENERAL OBLIGATION WARRANT AND PLEDGE OF ALL REVENUES DERIVED FROM ORDINANCE OF THE CITY OF FAYETTE IN THE PRINCIPAL AMOUNT OF \$600,000.00 AND THE REPAYMENT THEREOF

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTE, ALABAMA (“Municipality”) as follows:

Section 1: Definitions.

- a. Fiscal Year shall mean the fiscal year of the Municipality as established from time to time for purposes of Section 11, below.
- b. GAAP shall mean generally accepted accounting principles applied in a consistent manner.
- c. West Alabama Bank & Trust shall mean West Alabama Bank & Trust; Reform, Alabama; an Alabama banking corporation.
- d. Warrant shall have the meaning assigned in Section 2(a), below.
- e. Warrant Fund shall have the meaning assigned in Section 3(e), below.
- f. Municipal shall describe a thing that is owned, managed, or otherwise provided by the Municipality for the benefit of the public.
- g. All other terms not defined in this section shall be defined by their plain meaning in the context in which they appear.

Section 2: Findings and Representations.

The Municipality, by and through its governing body, does hereby find, determine, represent, and warrant as follows:

- a. It is necessary and desirable and in the public interest for the Municipality to issue its General Obligation Warrant, Series 2014, in the principal amount of \$600,000.00, as authorized and described herein (“Warrant”), to provide for the purchase of capital assets or payment for capital improvements to the public facilities of the Municipality, including but not limited to the following:
 - i. Various improvements to existing aquatic facilities:
\$600,000.00.

- b. The assessed valuation of the taxable property in the Municipality for the preceding fiscal year (ending 2013) is not less than \$38,903,600.00, and the total indebtedness of the Municipality chargeable against the limitation for the Municipality prescribed by the Constitution of Alabama (1901), as amended, is not more than twenty percent (20%) of said assessed valuation.
- c. The population of the Municipality is 4,619 according to the 2010 United States Census.

Section 3: Authorization, Description, Payment and Form of Warrant.

- a. The Municipality shall borrow the amount of \$600,000.00, in such amounts and at such times as shall be necessary for the purposes set forth in Section 2, above, and the Municipality shall issue therefor its General Obligation Warrant, Series 2014, in the following principal amount and of the following number, to the following financial institution to evidence a credit facility extended by such institution to the Municipality:

<u>Warrant No.</u>	<u>Principal Amount</u>	<u>Institution</u>
[2014-002]	\$600,000.00	West Alabama Bank & Trust

- b. The Warrant shall be dated on the date of issuance and shall bear interest at the per annum rate or rates; shall be payable in installments of principal and interest in such amounts, at such times, and in such manner; shall be subject to redemption prior to maturity; and shall be registered and transferred; all as provided in the form of the Warrant in Section 3(f), below.
- c. The principal and interest on the Warrant shall be payable in lawful money of the United States of America, at the principal office of the registered owner thereof or at such other location as may be determined by the registered owner, at par and without discount, exchange or deduction or charge therefor. The Municipality hereby covenants and agrees to pay all bank charges associated with the Warrant.
- d. The indebtedness evidenced and ordered paid by the Warrant shall be a general obligation of the Municipality for the punctual payment of the principal of and interest on said Warrant, toward and for which the full faith, credit, and taxing power as well as all revenues received from Fayette City Ordinance 2010-04 of the Municipality are hereby irrevocably pledged.
- e. There is hereby established a special fund designated the "Series 2014 Warrant Fund," which shall be held by West Alabama Bank & Trust, here named as paying agent for the Warrant. The Municipality shall pay or cause to be paid into the Warrant Fund from time to time such sums as

shall be sufficient to assure payment of the principal of and the interest on the Warrant as it matures and becomes due, according to the terms set forth in the Warrant. As the Warrant may be transferred from time to time by the registered owner, the paying agent of the Warrant may also be assigned, at the sole option of the existing registered owner.

- f. As further inducement for West Alabama Bank & Trust to extend the credit facility evidenced by the Warrant, the Municipality irrevocably pledges to West Alabama Bank & Trust that amount of its general revenue, defined by the combined revenue derived from sales tax, property tax, business tax, business license fees, and any and all revenues derived from Ordinance No. 2010-04 or any other monies collected by the Municipality subject to the exclusions set forth in Section 3(g), below, as is required to maintain sufficient funds in the Warrant Fund to make payments according to the terms set forth in the Warrant (“Revenue Pledge”).
- g. Notwithstanding the provisions of Section 3(f), above, the following funds are specifically excluded from the Revenue Pledge and are not pledged for any purpose under this Warrant, nor to the benefit of West Alabama Bank & Trust, nor any assign or transferee as registered owner or paying agent:
 - i. Proceeds issuing from any existing general obligation warrant, debenture, bond, or other debenture which now exists by and between the Municipality and any other party;
 - ii. Any other funds which are prohibited by any applicable laws from being pledged for this Warrant;
 - iii. Any other funds which, if pledged by the Municipality for this Warrant, would alter or destroy its status as a “qualified tax-exempt obligation,” as defined by the Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.
- h. The Warrant shall be in substantially the following form:

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**UNITED STATES OF AMERICA
STATE OF ALABAMA**

**CITY OF FAYETTE
GENERAL OBLIGATION WARRANT
SERIES 2014**

No. [2014-002]

Dated: _____

The CITY OF FAYETTE, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (“Municipality”), for value received, hereby acknowledges itself indebted to, and does hereby order and direct the Treasurer of the Municipality to pay, solely from the Warrant Fund hereinafter referenced, to

WEST ALABAMA BANK & TRUST

(“Warrantholder”) or its registered assigns the principal amount of

**SIX HUNDRED THOUSAND DOLLARS
(\$600,000.00)**

as hereinafter provided, and to pay, solely from the said Warrant Fund, interest on the unpaid balance of said principal amount advanced and outstanding hereunder from time to time, from the date advanced until payment in full, at a per annum rate of interest (computed on the basis of the actual number days elapsed over a 365-day-year) equal to TWO AND 85/10 percent (2.85%); such principal of and interest on this warrant being payable in installments as follows:

- (a) On _____, 2014, and continuing on the _____ day of each month thereafter until and including _____, 20____, the amount of \$_____, each such amount being applied first to the payment of interest accrued on the outstanding amount of this warrant and then to the reduction of such principal amount, and

provided, that if the interest on this warrant is determined by the Warrantholder, supported by an opinion of counsel, or by the Internal Revenue Service, to be includable in gross income under Section 103 of the Internal Revenue Code of 1986, as amended (“Code”) or if it is otherwise determined by the Internal Revenue Service that this warrant is not a “bank qualified tax exempt obligation” within the meaning of Section 265(b)(3) of the Code, then (1) this warrant shall bear interest at that rate of interest that would provide the Warrantholder an after-tax yield on the principal amount of this warrant at least equal to the after-tax yield the Warrantholder would receive if interest hereon were not so includable in gross income for federal income tax purposes or if this warrant was a “bank qualified tax-exempt obligation,” from (a) the date such interest must be included in such gross income, or (b) the date Warrantholder is required to take 100% (rather than 20%) of the interest hereon into account in compliance with said Code section 265(b), whichever is the earlier; and (2) the Municipality will reimburse the Warrantholder for all costs, expenses, penalties, attorneys’ fees, and all other losses incurred by the Warrantholder as a result of such determination; and (3) the Warrantholder shall then determine the amount

necessary to be paid in equal annual installments of principal and interest to fully amortize the principal amount of this warrant then outstanding over the then remaining term of this warrant. If either such determination is made, the difference between (1) the interest then computed at the higher rate, and (2) the interest already paid at the lower rate, shall be paid, along with all such costs, expenses, penalties, attorneys' fees, and all other said losses within thirty days after the date a written notice is mailed by the Warrantholder to the Municipality stating that such a determination has been made and stating the amount that is then due. The obligation to pay such additional interest and such other costs, expenses, penalties, attorneys' fees, and other losses shall survive the payment of the principal hereof.

The Municipality may, on any date, pay in advance the entire unpaid principal balance of this warrant or any lesser portion thereof by paying to the Warrantholder the principal amount to be prepaid, plus interest accrued or such principal amount to the date of such prepayment, without premium or penalty.

Payment of the principal hereof and interest hereon shall be made at the principal office of the Warrantholder, or at such other place as shall be designated to the Municipality by the Warrantholder, provided the final payment of principal of and interest on this warrant shall be made only upon presentation and surrender of this warrant to the Municipality for cancellation.

This warrant is issued pursuant to the Constitution and laws of the State of Alabama, including without limitation the provisions of Section 11-47-2 of the Code of Alabama (1975), and by resolution and proceedings of the governing body of the Municipality duly passed, held, and conducted ("Authorizing Proceedings").

The indebtedness evidenced by this warrant is a general obligation of the Municipality, and the full faith and credit of the Municipality and all revenues received by the Municipality from Ordinance 2010-04 are hereby irrevocably pledged to the punctual payment of the principal hereof and interest hereon in accordance with the provisions of this warrant.

The Municipality has established in the Authorizing Proceedings a special fund designated "Series 2014 Warrant Fund" ("Warrant Fund") for the payment of the principal of, premium, if any, and interest on this warrant and has obligated itself by irrevocable pledge of its general fund and all revenues received by the Municipality from Ordinance 2010-04 pursuant to the Authorizing Proceedings to pay or cause to be paid into the Warrant Fund sums sufficient to provide for the payment of the principal of and interest on this warrant as the same shall become due and payable.

This warrant is recorded and registered as to principal and interest in the name of the owner on the book of registration maintained for that purpose by the Municipality. The person in whose name this warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of and interest on this warrant shall be made only to or upon the order of the registered owner hereof or his legal representative, and neither the Municipality nor any agent of the Municipality shall be affected by any notice to the contrary. Payment of principal of and interest on this warrant shall be valid and effectual to

satisfy and discharge the liability of the Municipality upon this warrant to the extent of the amounts so paid.

This warrant may be transferred only upon written request of the registered owner or his legal representative addressed to the Municipality, such transfer to be recorded on said book of registration and endorsed hereon by the Municipality. Upon presentation to the Municipality for transfer, this warrant must be accompanied by a written instrument or instruments of transfer satisfactory to the Municipality, duly executed by the registered owner or his attorney duly authorized in writing, and the Municipality shall endorse on the schedule attached hereto for such purpose the principal amount of this warrant unpaid and the interest accrued hereon to the date of transfer. No charge shall be made for the privilege of transfer, but the registered owner of this warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

No covenant or agreement contained in this warrant or in the Authorizing Proceedings shall be deemed to be a covenant or agreement of any officer, agreement, employee, or member of the governing body of the Municipality in their individual capacity and none of such parties or persons, nor any officer executing this warrant, shall be liable personally for the obligations of this warrant or be subject to any personal liability or accountability by reason of the issuance of this warrant.

It is hereby recited, certified, and declared that the indebtedness evidenced and ordered paid by this warrant is lawfully due without condition, abatement, or offset of any description, that this warrant has been registered in the manner provided by law, that all acts, conditions, and things required by the Constitution and laws of the State of Alabama to happen, exist, and be performed precedent to and in the execution, registration, and issuance of this warrant, and the adoption of the Authorizing Proceedings, have happened, do exist, and have been performed as so required, and that the principal amount of this warrant and all other indebtedness of the Municipality are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS HEREOF, the Municipality, acting by and through its governing body, has caused this warrant to be executed in its name and on its behalf by its Mayor and its corporate seal to be affixed hereto and attested by its City Clerk, and has caused this warrant to be dated the date and year first above written.

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CITY OF FAYETTE, ALABAMA

By: _____
Mayor of Fayette, Alabama

SEAL

Attest: _____
City Clerk

REGISTRATION CERTIFICATE

It is hereby certified that this Warrant and the interest thereon have been registered by the undersigned as a claim against the City of Fayette, Alabama and the Warrant Fund herein described.

By: _____
Treasurer of Fayette, Alabama

REGISTRATION OF OWNERSHIP

This warrant is recorded and registered on the registry books of the City of Fayette in the name of the last owner named below. The principal of and interest on this warrant shall be payable only to or upon the order of such registered owner.

Date of Registration	In Whose Name Registered	Signature of Treasurer of Municipality
_____	<u>West Alabama Bank & Trust</u>	_____
_____	_____	_____
_____	_____	_____

ENDORSEMENT BY MUNICIPALITY OF UNPAID PRINCIPAL AND ACCRUED INTEREST ON DATE OF TRANSFER

Date of Transfer	Principal Unpaid	Accrued Interest on Transfer Date	Signature of Treasurer of Municipality
_____	_____	_____	_____
_____	_____	_____	_____

Section 4: Execution of the Warrant.

The Warrant shall be executed in the name and on behalf of the Municipality by the Mayor and shall be attested by the Clerk of the Municipality, and the official seal of the Municipality shall be imprinted thereon. The Warrant and the interest thereon shall be registered by the Treasurer of the Municipality in the records maintained by said Treasurer as a charge against the Municipality and the Warrant Fund. The registration of ownership of the Warrant shall be executed by the Treasurer of the Municipality, who shall also make the endorsements required at the time of any transfer of the Warrant. Said officers are hereby directed to so execute, attest, and register the Warrant and to make the appropriate endorsements and notations thereon.

Section 5: Authorization of Issuance of Warrant.

Warrant No. 2014-002 is hereby issued to West Alabama Bank & Trust as its registered owner. The Mayor and the Clerk are hereby authorized and directed to effect delivery of the Warrant and in connection therewith deliver such closing papers containing such representations as are required to demonstrate the legality and validity of the Warrant, the absence of pending or threatened litigation with respect thereto, and the exemption of the interest on the Warrant from federal and state income tax.

Section 6: Expenses of Issuance and Collection.

- a. The Municipality hereby agrees to pay all expenses of issuance of the Warrant, including but not limited to a loan fee to West Alabama Bank & Trust in the amount of \$250.00 and a reasonable attorneys' fee incurred by West Alabama Bank & Trust in preparation of the Warrant, said fee being here agreed and acknowledged by the Municipality as reasonable.
- b. The Municipality covenants and agrees that, if the principal of and interest on the Warrant are not paid promptly as such principal and interest matures and becomes due, it will pay to the registered owner of the Warrant or its registered assigns, all expenses incident to the collection of any unpaid portion thereof, including a reasonable attorneys' fee.

Section 7: Covenants with Respect to Federal Tax Exemption for Interest: Designation of Warrant Pursuant to Section 265 of the Internal Revenue Code

- a. The Municipality recognizes and acknowledges that the Warrant is being sold on the basis that the interest payable on the Warrant is excludable from gross income of the registered owner thereof for federal income taxation under Section 103 of the Internal Revenue Code of 1986, as amended ("Code"). The Municipality hereby covenants and agrees with the registered owner of the Warrant that:
 - i. The proceeds of the Warrant will be used solely for the governmental purposes for which the Warrant was issued;

- ii. None of the proceeds of the Warrant will be applied for any “private business use” as defined by the Code, nor will any part of the proceeds of the Warrant be used (directly or indirectly) to make or finance loans to persons other than a governmental unit, as defined by the Code;
 - iii. The payment of the principal of or interest on the Warrant will not be (under the terms of the Warrant or any other underlying agreements), directly or indirectly:
 - 1. Secured in any way by any interest in property used or to be used for a “private business use” as defined by the Code, or by payments in respect of such property, or;
 - 2. Derived from payments (whether or not to the Municipality) in respect of property, or borrowed money, used or to be used for a “private business use” as defined by the Code;
 - iv. The Proceeds of the Warrant shall not be used or applied by the Municipality, and the taxes or other revenues of the Municipality shall not be accumulated in such a manner, and no investment thereof shall be made, as to cause the Warrant to be or become an “arbitrage bond,” as that term is defined in section 148 of the Code;
 - v. The Municipality will comply with the requirements of Section 148(f) of the Code with respect to any required rebate to the United States; and
 - vi. The Municipality will make no use of the proceeds of the Warrant that would cause the Warrant to be “federally guaranteed” under Section 149(b) of the Code and the payment of the principal of and interest on the Warrant shall not be, directly or indirectly, “federally guaranteed,” in whole or in part, as described in said Section, except as otherwise permitted in said Section
- b. The Municipality hereby further covenants and agrees with the registered owner of the Warrant that, to the extent permitted by law, it will not take any action, or omit to take any action, with respect to the Warrant that would cause the interest on the Warrant not to be and remain excludable from gross income pursuant to the provision of Section 103 of the Code.
 - c. The Municipality hereby designates the Warrant as a “bank qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code.

The Municipality does hereby represent that neither the Municipality nor its “subordinate entities,” should any exist, have issued in the aggregate more than \$10,000,000.00 of “tax-exempt obligations” during calendar year 2014. The Municipality does hereby further represent that, based upon confirmations and representations by officers of its “subordinate entities,” should any exist, it reasonably anticipates that neither the amount of “qualified tax-exempt obligations” nor “tax-exempt obligations,” as defined by Section 265(b)(3) of the Code, which will be issued by the Municipality or its “subordinate entities” during calendar year 2014 will exceed \$10,000,000.00.

- d. The terms used in this Section in quotation marks shall have the respective definitions and meanings as set forth in the Code.

Section 8: Severability.

The provisions of this resolution are severable. In the event that any one or more of such provisions or the provisions of the Warrant shall, for any reason, be held illegal or invalid, such illegality or invalidity shall not affect the other provisions of this resolution or the Warrant, and this resolution and the Warrant shall be construed and enforced as if such illegal or invalid provision had not been contained herein or therein.

Section 9: Repeal of Conflicting Provisions.

All ordinances, resolutions, and orders or parts thereof by the Municipality, its governing body, or any official, in conflict or inconsistent with this resolution are, to the extent of such conflict or inconsistency, hereby repealed.

Section 10: Provisions of Resolution Form a Contract.

The terms, provisions, and conditions set forth in this resolution constitute a contract between the Municipality and the registered owner of the Warrant and shall remain in effect until the principal of and interest on the Warrant shall have been paid in full.

Section 11: Reporting of Financial and Other Information.

The Municipality shall keep proper books of record and account in which full, true, and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Municipality in accordance with GAAP consistently applied, and will furnish to the registered owner of the Warrant:

- a. Annual Financial Statements. As soon as available, and in any event within 150 days after the close of each Fiscal Year of the Municipality, the complete, unqualified, unredacted audited financial statements of the Municipality, including the balance sheet as of the end of such Fiscal Year and the related statements of operations and changes in net assets for such Fiscal Year, setting forth in each case in comparative form the

corresponding figures for the preceding Fiscal Year, all in reasonable detail, certified and prepared by an independent certified public accountant satisfactory to the registered owner of the Warrant, in accordance with GAAP, consistently applied and fairly presenting the financial condition of the Municipality as of the end of such Fiscal Year;

- b. Other Reports. Promptly after the furnishing thereof, copies of any financial statement or report furnished to any other holder of the securities of the Municipality pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the registered owner of the Warrant pursuant to any other clause of this Section; and,

- c. Other Information. Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Municipality as the registered owner of the Warrant may from time to time reasonably request.

Duly passed and adopted as an ordinance of the City of Fayette on this _____ day of February, 2014.

Mayor

Authenticated and Attested:

City Clerk