

ORDINANCE NO. 06062022 - 339

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$279,244 CITY OF MONTEVALLO, ALABAMA GENERAL OBLIGATION WARRANT, SERIES 2022 TO EVIDENCE A LOAN FROM TRUSTMARK NATIONAL BANK FOR MUNICIPAL PURPOSES

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

Section 1. Findings. Having made due and proper investigation of the matters hereinafter referred to, the Council has ascertained and does hereby find and declare that the following facts are true and correct:

- (a) The City has previously determined that it is in the best interest of the City to provide funds to acquire a fire truck for use by the City (the "Equipment"). The estimated cost of the Equipment, when added to other funds available for the purpose, is expected to be \$279,244.
- (b) In order to obtain financing for such amount needed to pay the costs of the Equipment, it is necessary, advisable and in the interest of the public that the City borrow the required funds from Trustmark National Bank (the "Bank") and issue the Warrant hereinafter authorized as evidence of its obligation to such Bank.
- (c) The City is entitled to receive funding under the American Rescue Plan Act ("ARPA") and expects to use a portion of such funds to offset a portion of the costs of the Equipment.
- (d) Neither the City nor any "subordinate entity" or "on behalf of issuer" as such terms are used in Section 265(b) of the Internal Revenue Code of 1986, as amended, has issued in 2022, or expects to issue within the remainder of 2022, tax-exempt obligations in an amount in excess of \$10,000,000.

Section 2. Authorization of Warrant. In order to provide for the payment of the Equipment and the costs of the issuance for the Warrant, and pursuant to the authority contained in Section 11-47-2, Code of Alabama 1975, as amended, there is hereby authorized to be issued by the City its \$279,244.00 General Obligation Warrant, Series 2022 (the "Warrant"). The Warrant shall be dated the date of its delivery and shall contain and be subject to the terms and conditions set forth in the form of Warrant presented herewith and made a part hereof. Such form of Warrant shall be attached as Exhibit A to the minutes of the meeting at which this Ordinance is adopted.

Section 3. Source of Payment; Security. The indebtedness evidenced and ordered paid by the Warrant is and shall be a general obligation of the City for payment of the principal of and the interest on which the full faith and credit of the City are hereby irrevocably pledged. The City further agrees that, so long as the Warrant remains outstanding and any portion thereof remains

unpaid, and to the full extent of the City's power to do so under the constitution and laws of the State of Alabama, the City will continue to collect and enforce municipal taxes to the extent necessary to pay the principal of and interest on the Warrant.

Section 4. Creation of Warrant Fund. There is hereby created a special trust fund of the City, the full name of which shall be "City of Montevallo, Alabama Warrant Fund, 2022." Trustmark National Bank shall be and remain the Depository for the Warrant Fund. The monies in the Warrant Fund shall be used to pay the principal of and interest on the Warrant as the same shall become due and payable. There shall be paid into the Warrant Fund, on or before the last business day preceding any date on which a payment of principal of or interest on the Warrant is due, an amount which, when added to the amount then on deposit therein, will equal the principal of (if any) and interest on the Warrant coming due on such payment date.

All monies on deposit in the Warrant Fund shall be used for payment of the principal of and interest coming due on the Warrant.

The Warrant Fund shall be and at all times remain public funds impressed with a trust for the purpose for which the Warrant Fund is herein created. The Depository for the Warrant Fund shall at all times keep the monies on deposit with it in the Warrant Fund continuously secured for the benefit of the City and the Holder of the Warrant.

Section 5. Covenant as to Tax-Exempt Obligation. (a) The City hereby designates the Warrant as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In addition, the City acknowledges and agrees that the Warrant is to be issued in compliance with the conditions necessary for the interest income thereon to be exempt from federal income taxation pursuant to the relevant provisions of the Code and covenants and agrees that it will not in any way cause or permit the proceeds of the Warrant to be used in a manner which would cause the interest on the Warrant to lose the exemption from federal income taxation as provided under the Code and the applicable regulations thereunder and will comply with all applicable provisions of the Code (including, without limitation, the provisions relating to post-issuance actions affecting tax exemption) to the extent necessary for interest on the Warrant to be excludable from gross income of the holders thereof.

(b) Upon the occurrence of a Determination of Taxability, as hereinafter defined, the City shall promptly notify the Holder of the Warrant and shall make all payments required by the terms of the Warrant. As used herein, the term "Determination of Taxability" shall mean a determination that the interest income on the Warrant is includable in gross income of the recipient thereof for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(a) The date on which the City determines that the interest income on the Warrant is includable in gross income for federal income tax purposes by filing with the Warrant holder a statement to that effect;

(b) The date on which the City or any Warrant holder shall be advised by private ruling, technical advice or any other written communication from an authorized official of the Internal Revenue Service that, based upon any filings by the City, or upon any review or audit of the City, or upon any other grounds whatsoever, the interest income on the Warrant is includable in gross income for federal income tax purposes;

(c) The date on which the City shall receive notice from the Warrant holder in writing that the Warrant holder has been advised (i) by any Warrant holder that the Internal Revenue Service has notified such Warrant holder that it has determined that the interest income on the Warrant is includable in gross income for federal income tax purposes or (ii) by any authorized official of the Internal Revenue Service that the interest income on the Warrant is includable in gross income for federal income tax purposes; or

(d) The date on which the City shall receive notice from the Warrant holder, that such Warrant holder has become aware of facts that cause such Warrant holder to determine in good faith that the interest income on the Warrant is includable in gross income for federal income tax purposes;

provided, that no Determination of Taxability shall be deemed to have occurred: (1) as a result of a determination by the City pursuant to the preceding clause (a) unless supported by a written opinion of Bond Counsel acceptable to the Warrant holder and the City that the interest income on the Warrant is includable in gross income for federal income tax purposes; (2) as a result of the event described in the preceding clause (d) if within twenty (20) days after the City has received notice of the event described in said clause (d) the City shall deliver to the Warrant holder giving such notice an opinion of Bond Counsel acceptable to the Warrant holder that the interest income on the Warrant is not so includable; or (3) as a result of the events described in either of the preceding clauses (b) and (c) unless and until (A) the City has been afforded a reasonable opportunity, at its expense, to contest such a determination either through its own action (if permitted by law) or by or on behalf of the Warrant holder and (B) all such contests, if made, have been abandoned by the City or have been finally determined by a court of competent jurisdiction from which no further appeal exists.

[Section 6. Application of ARPA Funds. Upon receipt of any ARPA funds designated and available for payment of the costs of the Equipment the City covenants and agrees that it will apply such funds within a reasonable time after receipt to the prepayment and redemption of the Warrant.]

Section 7. Authorization. The Mayor and Clerk of the City are hereby authorized and directed to execute and deliver the Warrant to Trustmark National Bank.

Section 8. Contractual Provisions. The provisions of this Ordinance shall constitute a contract between the City and the Holder of the Warrant. Upon payment in full of the principal of and interest on the Warrant the obligations of the City hereunder shall cease.

Section 9. Severability. The various provisions of this Ordinance are hereby declared to be severable. In the event any provisions hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Ordinance.

Section 10. Effective Date. This Ordinance shall become effective immediately upon its adoption or otherwise as shall be required by State law.

EXHIBIT "A"

FORM OF WARRANT

UNITED STATES OF AMERICA
STATE OF ALABAMA
CITY OF MONTEVALLO, ALABAMA
GENERAL OBLIGATION WARRANT
SERIES 2022

MONTEVALLO, ALABAMA, a political subdivision of the State of Alabama (the "City"), for value received, hereby acknowledges that it is indebted in the principal sum of TWO HUNDRED SEVENTY-NINE THOUSAND TWO FORTY-FOUR AND NO/100 DOLLARS (\$279,244.00) and hereby directs its Clerk to pay (but solely out of the Warrant Fund referred to below) such principal sum to TRUSTMARK NATIONAL BANK, or registered assigns, and to pay (but solely out of the Warrant Fund) interest on such principal sum from the date hereof until such principal sum shall become due and payable at the rate of 3.45% per annum, calculated on the basis of actual days elapsed and a 360-day year. Interest on this Warrant shall be payable in monthly installments of principal, payable on the__ day of July, 2022 and of each month thereafter to and including June __, 2023. The principal amount hereof, together with unpaid accrued interest to such date, shall be due and payable on June __, 2023.

Upon the occurrence of a Determination of Taxability (as defined in the Authorizing Ordinance hereinafter described), interest hereon shall accrue at the rate of __% per annum, and the payments shall be adjusted to provide for equal monthly payments of principal and interest during the remaining term hereof, commencing with the payment immediately following receipt by the Holder hereof of notice of such occurrence. In addition, within ten (10) days following any Determination of Taxability, the City shall pay to the Holder hereof (without regard to whether such Holder shall have previously been the Holder) an amount equal to the difference between (a) the interest paid hereon from the date from which interest hereon became includable in gross income of the Holder to the date of the Determination of Taxability, and (b) the amount of interest which would have been payable hereon if this Warrant had borne interest at the rate of _____% per annum during that same period.

The principal and interest so payable, and punctually paid or duly provided for, on any payment date will, as provided in the ordinance adopted by the City Council on _____, 2022 (the "Authorizing Ordinance"), be paid to the person in whose name this Warrant is registered at the close of business on the last business day prior to the next preceding such payment date.

Payment of principal of or interest on this Warrant due on each payment date shall be made by check or draft mailed by the City to the person entitled thereto at its address appearing in the Warrant Register maintained with respect to the Warrant. Such payments of principal and interest shall be deemed timely made if so mailed on the payment date or, if such payment date is not a date

on which banks are open for business, on the next such day next following such payment date. Payment of the final installment of principal of and interest on this Warrant shall be made only upon surrender of this Warrant to the City. All such payments shall be made in such coin or currency of the United States of America as at the time of payment as legal tender for the payment of public and private debts.

This warrant is issued pursuant to the provisions of Section 11-47-2 of the Code of Alabama of 1975, as amended, and is a general obligation of the City, to which the City has pledged and hereby pledges its full faith and credit. This Warrant does not constitute or create an obligation, debt, liability or moral obligation of the State or any political subdivision thereof except the City, to the extent set forth in the Authorizing Ordinance.

This Warrant is subject to prepayment at any time, upon prior written notice to the Holder, in whole or in part, at a redemption price equal to the principal amount to be prepaid plus all interest accrued hereon to the date of prepayment. [In addition, the City has covenanted in the Authorizing Ordinance to apply certain federal grant funds to prepay this Warrant, as and to the extent set forth in the Authorizing Ordinance.]

This Warrant is nonnegotiable and is transferable only by a transfer duly executed by the person in whose name this Warrant is registered on the registry books of the Clerk of the City. Each Holder hereof, by receiving or accepting this Warrant, shall consent and agree and shall be estopped to deny that this Warrant may be transferred only in accordance with the provisions of the Authorizing Ordinance.

It is hereby certified and recited 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 conditions, actions and things required by the Constitution and laws of the State of Alabama to exist, be performed or happen precedent to the issuance of this Warrant exist, have been performed and have happened; and that the indebtedness evidenced and ordered paid by this Warrant, together with all other indebtedness incurred by the City, was at the time the same was created and is now within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the City has caused this Warrant to be executed on its behalf by its Mayor and Clerk and has caused the seal of the City to be impressed hereon, and has caused this Warrant to be dated June ____, 2022.

CITY OF MONTEVALLO, ALABAMA

(SEAL)

By: _____
Its: Mayor

Attest:

Its: City Clerk

[FORM OF REGISTRATION AS CLAIM AGAINST WARRANT FUND]

I hereby certify that this Warrant has been registered by me as a claim against the Warrant Fund referred to in this Warrant.

Clerk, City of Montevallo, Alabama

[FORM OF ASSIGNMENT]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ the within Warrant and hereby irrevocably constitute(s) and appoint(s) _____, attorney, with full power of substitution in the premises, to transfer this Warrant on the books of the within-mentioned City.

Dated this ____ day of _____, ____.

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Warrant in every particular, without alteration, enlargement or change whatsoever.

Signature Guarantee:

(Bank, Trust Company or Fund)

By: _____
(Authorized Officer)

CITY CLERK'S CERTIFICATE

I, Steve Gilbert, City Clerk of the City of Montevallo, Alabama, DO HEREBY CERTIFY that the foregoing pages of typewritten material constitute an Ordinance duly adopted at a regular meeting of the City Council of Montevallo, Alabama, held on _____, 2022, pertaining to the City's General Obligation Warrant, 2022, which meeting was called and assembled and was open to the public and at which a quorum was present and acting throughout, and that the original of said Ordinance and Order appears of record in the minute books of the City Council of Montevallo, Alabama, which are in my custody and control.

Given under my hand and the seal of the City of Montevallo, Alabama, this ____ day of _____, 2022.

[SEAL]

City Clerk of the
City of Montevallo, Alabama