

RESOLUTION NO. R-12-06

**Authorizing the Issuance, Execution, Sale and Delivery of \$3,000,000 Principal Amount General Obligation Warrant of the City of Gadsden and the Payment Thereof**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GADSDEN, ALABAMA (the "Municipality") as follows:

**Section 1. Definitions.**

- (a) **Warrant** shall have the meaning assigned in Section 2(a).
- (b) **Warrant Fund** shall have the meaning assigned in Section 2(e).

**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 2006, in principal amount of \$3,000,000, as authorized and described herein (the "Warrant"), to provide for the payment of capital assets or capital improvements to the public educational facilities of the Municipality.

(b) The assessed valuation of the taxable property in the Municipality for the preceding fiscal year (ending September 30, 2005 and on the basis of which taxes became due and payable on October 1, 2005) is not less than \$279,418,980, and the total indebtedness of the Municipality chargeable against the debt limitation for the Municipality prescribed by the Constitution of Alabama of 1901, as amended, is not more than twenty percent of said assessed valuation.

(c) The population of the Municipality is 38,978 according to the 2000 United States Census.

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

(a) The Municipality shall borrow the amount of \$3,000,000, in such amounts and at such times as shall be necessary for the purposes set forth in Section 2 hereof, and the Municipality shall issue therefor its General Obligation Warrant, Series 2006, 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>
R-1	\$3,000,000	Wachovia Bank, National Association

(b) The Warrant shall be dated the date of issuance; 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 subsection (f).

(c) The principal of 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, in Gadsden, Alabama, at par and without discount, exchange or deduction or charge therefor. The Municipality hereby covenants and agrees to pay all bank charges for 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 which the full faith, credit and taxing power of the Municipality are hereby irrevocably pledged.

(e) There is hereby established a special fund designated the Series 2006 Warrant Fund (the "Warrant Fund") which shall be held by the bank 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 the payment of the principal of and interest on the Warrant as it matures and comes due.

(f) The Warrant shall be in substantially the following form:

**UNITED STATES OF AMERICA  
STATE OF ALABAMA**

**CITY OF GADSDEN  
GENERAL OBLIGATION WARRANT  
SERIES 2006**

**No. R-1**

**Dated: January \_\_\_\_, 2006**

The CITY OF GADSDEN, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "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

**WACHOVIA BANK, NATIONAL ASSOCIATION**

(the "Warrantholder") or registered assigns the principal amount of

**THREE MILLION DOLLARS  
(\$3,000,000)**

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 of days elapsed over a 360-day year) equal to four and thirty three one-hundredths percent (4.33%); such principal of and interest on this warrant being payable in installments as follows:

(a) on March 1, 2006, and continuing on the first day of each month thereafter, until and including January 1, 2026, the amount of \$18,710, 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

(b) on February 1, 2026 an amount equal to the outstanding principal amount of this warrant plus interest accrued thereon to such date of payment;

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 (the "Code") or if it is determined by the Internal Revenue Service that this warrant is not a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Code, then (1) this warrant shall bear interest at the Wachovia Base Rate (as hereinafter defined), as said rate is adjusted from time to time as hereafter provided, from (a) the date such interest must be included in such gross income, or (b) the date the Warrantholder is required to take 100% (rather than 20%) of the interest hereon into account in complying with the said 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 (i) the interest then due computed at the higher rate, and (ii) 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 hereof 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. In the event such determination is made and the Wachovia Base Rate becomes the effective rate of interest on this warrant, the applicable rate of interest on this warrant shall be adjusted simultaneously with each change in the Wachovia Base Rate thereafter publicly designated by Wachovia Bank (as hereinafter defined) without notice to the Municipality and without any further action by the Warrantholder.

Wachovia Base Rate shall mean the rate of interest announced from time to time by Wachovia Bank (as hereinafter defined) as its base interest rate, with the understanding that Wachovia Bank's base interest rate is one of its base rates established from time to time for lending purposes after taking into account such factors as Wachovia Bank may in its sole discretion from time to time deem appropriate and is not necessarily the best or lowest rate offered by Wachovia Bank.

Wachovia Bank shall mean Wachovia Bank, National Association and its successors and assigns.

The Municipality may, on any date, pay in advance the entire unpaid principal balance of this warrant or any lessor portion or portions thereof by paying to the Warrantholder the principal amount to be prepaid, plus interest accrued on 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 in the City of Gadsden, Alabama, or at such other place as shall be designated to the Municipality in writing 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 a resolution and proceedings of the governing body of the Municipality duly passed, held and conducted (the "Authorizing Proceedings").

The indebtedness evidenced by this warrant is a general obligation of the Municipality, and the full faith and credit of the Municipality are hereby sacredly and irrevocably pledged to the punctual payment of the principal hereof and interest hereon.

The Municipality has established in the Authorizing Proceedings a special fund designated "Series 2006 Warrant Fund" (the "Warrant Fund") for the payment of the principal of, premium, if any, and interest on this Warrant and has obligated itself 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, agent, employee, or member of the governing body of the Municipality in the individual capacity thereof and none of such parties or persons nor any officer executing this Warrant shall be liable personally on 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 WHEREOF, 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 hereunto affixed and attested by its City Clerk, and has caused this warrant to be dated the date and year first above written.

**CITY OF GADSDEN, ALABAMA**

By \_\_\_\_\_  
Mayor

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 Gadsden, Alabama and the Warrant Fund herein referenced.

\_\_\_\_\_  
Treasurer of the City of Gadsden, Alabama

**REGISTRATION OF OWNERSHIP**

This warrant is recorded and registered on the registry books of the City of Gadsden 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.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Treasurer of Municipality</u>
<u>January , 2006</u>	<u>Wachovia Bank, National Association</u>	_____
_____	_____	_____
_____	_____	_____

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

<u>Date of Transfer</u>	<u>Principal Unpaid</u>	<u>Accrued Interest on Date of Transfer</u>	<u>Signature of Treasurer of Municipality</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**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. R-1 is hereby issued to Wachovia Bank, National Association. 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 Warrants.

(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 comes due, it will pay to the registered owner of the Warrant or its registered assignees, all expenses incident to the collection of any unpaid portion thereof, including a reasonable attorney's fee.

**Section 7. Covenants With Respect to Federal Tax Exemption for Interest; Designation of Warrant Pursuant to Section 265 of the 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 (the "Code"). The Municipality hereby covenants and agrees with the registered owner of the Warrant that:

(1) the proceeds of the Warrant will be used solely for the governmental purposes for which the Warrant was issued;

(2) none of the proceeds of the Warrant will be applied for any "private business use" 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;

(3) the payment of the principal of or interest on the Warrant will not be (under the terms of the Warrant or any underlying arrangements) directly or indirectly (i) secured in any way by any interest in property used or to be used for a "private business use" or by payments in respect of such property or (ii) 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";

(4) 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;

(5) 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

(6) 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 provisions of Section 103 of the Code.

(c) The Municipality hereby designates the Warrant as a "qualified tax-exempt obligation" for the purposes of Section 265(b)(3) of the Code. The Municipality does hereby represent that neither it nor its "subordinate entities" have issued in the aggregate more than \$10,000,000 of "tax-exempt obligations" during calendar year 2006. The Municipality does hereby further represent that, based upon confirmations and representations by officers of its "subordinate entities", it reasonably anticipates that the amount of neither "qualified tax-exempt obligations" nor "tax-exempt obligations" which will be issued by the Municipality or its "subordinate entities" during calendar year 2006 will exceed \$10,000,000.

(d) The terms used in this Section in quotation marks shall have the respective definitions and meanings provided by 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 of 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 in conflict or inconsistent with this resolution are, to the extent of such conflict or inconsistency, hereby repealed.

**Section 10. Provisions of Resolution 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.

Duly passed and adopted this 10th day of January, 2006.

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Mayor

Authenticated and attested:

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City Clerk