

ORDINANCE NO. 2019-1

AN ORDINANCE AUTHORIZING
ECONOMIC DEVELOPMENT AGREEMENT WITH
LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.
THE ISSUANCE OF A LIMITED OBLIGATION WARRANT
(LOWE'S COMMERCIAL DEVELOPMENT PROJECT)
SERIES 2019
IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$2,000,000
AND OTHER AGREEMENTS AND ACTIONS

BE IT ORDAINED by the Mayor and City Council (the "Council") of the **CITY OF HAMILTON, ALABAMA** (herein called the "City") as follows:

Section 1. Findings. The Council has found and ascertained and does hereby declare as follows:

(a) The City has determined that it is necessary, desirable and in the public interest to support and promote industrial and economic development in the City in order to increase tax revenues and improve the quality of life of its citizens.

(b) The Company, either directly or through an affiliate thereof, holds or will acquire fee simple title to approximately 18.51 acres, more or less, of real property located within the corporate limits of the City; which real property is described on Exhibit A to the Economic Development Agreement hereinafter authorized and defined (the "Project Site"), upon which the Company has proposed developing and constructing a development consisting of a Love's Travel Stop, one or more nationally recognized fast food chain restaurants, and other retail development, containing approximately twelve thousand (12,000) square feet (together, the "Project").

(c) The City has agreed to provide certain incentives and certain other assistance for the development of the Project as described in the Development Agreement including, among others, the payment of up to \$2,000,000, but solely from collections of City Diesel Tax Revenues (as defined in the Development Agreement), and in evidence of such payment obligation the City plans to issue a limited obligation warrant payable solely from City Diesel Tax Revenues as herein set (which such warrant is hereinafter defined as the "Warrant").

(d) The City has determined that entry into the Development Agreement and the development, construction and operation of the Project will: promote economic, industrial and commercial development of the City; create jobs; increase the tax revenues in and around the City; stimulate the local economy; promote the location, expansion and retention of commercial and industrial enterprises and activity in the City; and improve the quality of life for

citizens in the City; and further, the City has determined that the expenditure of the public funds for the purposes specified herein and in the Development Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefits accruing to any private entity or entities.

(e) The Council deems it necessary, desirable and in the public interest to authorize and approve the Development Agreement, the Warrant, and various other documents and actions in connection therewith.

Section 2. Authorization of Economic Development Agreement. Acting pursuant to the Constitution and laws of the State of Alabama, including without limitation Amendment 772 to the Constitution of Alabama of 1901, as amended, recodified as Section 94.01 of the Official Recompilation of the Constitution of Alabama 1901 ("Amendment 772"), the Council does hereby authorize and direct the Mayor and the City Clerk of the City, or either of them, to execute and deliver, for and in the name and on behalf of the City, the Economic Development Agreement between the City and the Company, and do hereby authorize and direct the City Clerk of the City to affix the corporate seal of the City to the said Economic Development Agreement and to attest the same. The said Economic Development Agreement shall be in substantially the form presented to the meeting at which this ordinance is adopted and attached hereto as Exhibit I, with such additions, omissions and changes as may be approved by the Mayor (the "Economic Development Agreement"), the execution of the Development Agreement by the Mayor being conclusive evidence of such approval.

Section 3. Authorization of Warrant. (a) Pursuant to the applicable provisions of the Code of Alabama 1975, as amended, including particularly but without limitation Section 11-47-2 and Section 11-84-1 thereof, and pursuant to Amendment 772, the City is hereby authorized to issue and deliver that certain Limited Obligation Warrant (Lowe's Development Project), Series 2019, in the principal amount of not more than \$2,000,000 (the "Warrant"). The Warrant shall be issued by the City to the Company as evidence of the obligation of the City to make payments to the Company under Section 3.1 of the Economic Development Agreement.

(b) The Warrant shall not bear interest, shall be issued in an aggregate principal amount of not to exceed \$2,000,000, shall be dated the date of its initial delivery, and shall mature on the close of the Reimbursement Period (as defined in the Economic Development Agreement).

(c) There is hereby established a special fund known as the "Warrant Fund" into which the City will deposit proceeds from the City Diesel Tax Revenues to pay maturing installments of debt service on the Warrant as required under the Economic Development Agreement. Amounts on deposit in the Warrant Fund shall be held therein and only used for payment of such debt service.

Section 3. Optional Prepayment Privilege. The City reserves and shall have the privilege of prepaying all or a portion of the principal balance of the Warrant at any time and

from time to time in whole or in part without penalty or premium upon five (5) Business Days' prior written notice to the Company.

Section 4. Execution of the Warrant; Registration. (a) The Warrant shall be executed and the corporate seal of the City shall be affixed thereto by the Mayor, and the City Clerk shall attest the same by affixing the signature of such officer to the Warrant. The Warrant shall be registered in the records maintained by the City as a limited obligation of the City payable solely from City Diesel Tax Revenues (as defined in the Economic Development Agreement) with respect to the Warrant and the Warrant Fund Established therefore as herein provided. The aforesaid officers of the City are hereby authorized and directed so to execute and attest the Warrant, affix said seal thereto and make such registration.

(b) A registration certificate by the City, in substantially the form set forth in Section 6 hereof, duly executed by the manual signature of the City Clerk, shall be endorsed on the Warrant and shall be essential to its validity.

(c) The Warrant shall be registered in the name of the Company and shall not be transferable except to an "accredited investor" as defined in the Securities and Exchange Act of 1933 and the rules and regulations promulgated thereunder and only upon compliance with applicable State of Alabama and federal securities laws.

Section 5. Limited Obligation. The indebtedness evidenced and ordered paid by the Warrant is and shall be a limited obligation of the City payable solely out of City Diesel Tax Revenues in the Warrant Fund. None of the agreements, representations or warranties made or implied in this ordinance, or in the issuance of the Warrant, shall ever impose any personal or pecuniary liability or charge upon the City, whether before or after any breach by the City of any such agreement, representation or warranty, except with the City Diesel Tax Revenues on deposit in the Warrant Fund. The City shall not in any manner be liable for payment of the principal of debt service of the Warrant, or for the performance of any of the obligations of the City herein contained or contained in the Warrant, other than out of City Diesel Tax Revenues on deposit in the Warrant Fund, subject to all prior liens thereon and pledges thereof as aforesaid.

Section 6. Form of Warrant. The Warrant shall be in substantially the following form, with such changes therein as shall be necessary to comply with the provisions of this ordinance:

(Form of Warrant)

THIS WARRANT MAY BE TRANSFERRED ONLY UPON THE PRIOR WRITTEN CONSENT OF THE CITY OF HAMILTON, ALABAMA, AND ONLY TO AN "ACCREDITED INVESTOR" AS DEFINED IN THE SECURITIES AND EXCHANGE ACT OF 1933 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER, AND ONLY UPON COMPLIANCE WITH APPLICABLE STATE AND FEDERAL SECURITIES LAWS AND WITH THE ORDINANCE OF THE CITY REFERRED TO HEREIN.

UNITED STATES OF AMERICA
STATE OF ALABAMA

CITY OF HAMILTON

LIMITED OBLIGATION WARRANT
(LOWE'S COMMERCIAL DEVELOPMENT PROJECT)
SERIES 2019

The City Treasurer of the **CITY OF HAMILTON, ALABAMA** (herein called the "City"), a municipal corporation under the laws of the State of Alabama, hereby acknowledges itself indebted to **LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.**, an Oklahoma corporation, or its registered assigns (the "Holder"), in the principal amount of the principal amount of not to exceed

TWO MILLION DOLLARS (\$2,000,000.00),

and hereby orders and directs the City Treasurer of the City to pay to the Holder, solely from City Diesel Tax Revenues deposited into the Warrant Fund, up to said principal amount, without interest, from time to time and at such times as required under Section 3.1(a) of that certain Economic Development Agreement dated _____, 2019 (the "Economic Development Agreement") between the City and Love's Travel Stops & Country Stores, Inc., an Oklahoma corporation (from time to time herein, the "Company"), until and including the first to occur of (i) such time as the said \$2,000,000 of principal evidenced hereby has been paid by the City or, (ii) the end of the Reimbursement Period as set forth and defined in the Economic Development Agreement. Capitalized term used herein and not otherwise defined shall have the meanings assigned to them in the Economic Development Agreement.

This Warrant is issued pursuant to the authority of the Constitution and laws of the state of Alabama, including particularly and without limitation, Amendment 772 to the Constitution of Alabama of 1901, as amended (recodified as Section 94.01 of the Official Recompile of the Constitution of Alabama 1901) ("Amendment 772") and pursuant to the Economic Development Agreement.

Reference is made to the provisions of the Economic Development Agreement, to and by which all of which provisions the Holder, by acceptance of this Warrant, assents and agrees to be bound.

Payment of this Warrant shall be made to or as directed by the Holder; provided, the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the City for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the Holder on its internal records (which may be kept by computer or by other

means determined by the Holder), and the Holder is hereby authorized so to record thereon all such payments.

All payments of principal of this Warrant by the City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this Warrant to the extent of the amounts so paid.

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 this Warrant shall be made only to or upon the order of the Holder hereof or his legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

This Warrant is a limited obligation of the City payable solely from the City Diesel Tax Revenues as provided in Section 3.1(a) of the Economic Development Agreement.

This Warrant shall never constitute a charge against the general credit or taxing powers of the City within the meaning of any constitutional provision or statutory limitation whatsoever.

The City has established a special fund designated "Warrant Fund" for the payment of this Warrant and has obligated itself to pay or cause to be paid into the Warrant Fund, the City Diesel Tax Revenues, but only if payment of such funds is then required under the Economic Development Agreement and the Company is not in default thereunder.

This Warrant is registered in the name of the Holder on the book of registration maintained for that purpose by the City. This Warrant may be transferred only upon surrender hereof to the City for the transfer, together with the written request of the Holder or his legal representative addressed to the City, and recordation of such transfer on said book of registration and endorsement hereon by the City. Upon presentation to the City for transfer, this Warrant must be accompanied by a written instrument or instruments of transfer satisfactory to the City, in form of the Assignment attached hereto, duly executed by the Holder or its attorney duly authorized in writing, and the City shall endorse on the schedule attached hereto for such purpose the principal amount of this Warrant unpaid. The Holder shall pay all expenses (including without limitation reasonable legal fees of counsel to the City) of the City in connection with such transfer and any tax or other governmental charge required to be paid with respect thereto.

The City reserves and shall have the privilege of prepaying all or a portion of the principal balance of the Warrant at any time and from time to time in whole or in part without penalty or premium upon five (5) Business Days' prior written notice to the Company.

IN WITNESS WHEREOF, the City has caused this limited obligation warrant to be executed and its official seal to be hereunto affixed by the Mayor and has caused the same to be attested by its City Clerk, both of whom have hereunto subscribed their signatures and are hereunto duly authorized, and has caused this limited obligation warrant to be dated its Dated Date.

CITY OF HAMILTON, ALABAMA

By: _____
Mayor

[SEAL]

Attest:

City Clerk

(Form of Certificate of Registration by City Treasurer)

I hereby certify that this limited obligation warrant was at the time of issuance thereof duly registered by me as a limited obligation claim against the **CITY OF HAMILTON, ALABAMA**, and the Warrant Fund referred to herein, and the City Diesel Tax Revenues pledged to the payment hereof.

City Treasurer of the
CITY OF HAMILTON, ALABAMA

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Marion County, State of Alabama, entered on the _____ day of _____, 2019.

/s/ _____
Clerk of Circuit Court of Marion County,
State of Alabama

Section 7. Ratification of Land Swap Agreement. The Council does hereby authorize, ratify and affirm the execution and delivery of that certain Land Swap Agreement by and among the City, Eugene Cashion, aka Eugene Cashion, Jr., and Linda K. Cashion, aka Linda Kay Cashion, a copy of which such agreement is attached as Exhibit II hereto and is incorporated herein by reference.

Section 8. Additional Documents Authorized. The Mayor and the City Clerk, or either of them, are each hereby authorized and directed to execute such other documents or certificates necessary in order to carry out the transactions contemplated by this Ordinance and the instruments authorized or ratified herein.

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

Council Member [] moved that the rules be suspended and that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Council Member [] and, upon the motion being put to vote, the following vote was recorded:

YEAS:

NAYS:

The Mayor thereupon declared that the motion for unanimous consent for immediate consideration of and action on said ordinance had been unanimously carried. Council member [] thereupon moved that the said ordinance be finally adopted, which motion was seconded by Council member [] and, upon the motion being put to vote, the following vote was recorded:

YEAS:

NAYS:

The Mayor thereupon declared that the motion for adoption of said ordinance had been unanimously carried.

* * *

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

ADOPTED and APPROVED this the 3RD day of June, 2019.

/s/ Bob Page
Mayor

Attest:

/s/ Angela Owens
City Clerk