

COUNCIL BILL NO. 1745

INTRODUCED BY: JOHN D. MICKS

ORDINANCE NO. 1654

AN ORDINANCE

TO AUTHORIZE THE UNDERTAKING OF THE LOAN PROJECT (DEFINED HEREIN); TO AUTHORIZE AND DIRECT THE INCURRING OF NON-ELECTORAL DEBT THROUGH THE ISSUANCE OF A GENERAL OBLIGATION NOTE OF THE CITY OF DUBOIS (THE "CITY"), PENNSYLVANIA, IN THE PRINCIPAL AMOUNT OF FIVE MILLION FORTY THOUSAND DOLLARS (\$5,040,000) FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF GENERAL INFRASTRUCTURE IMPROVEMENTS AND BUILDING IMPROVEMENTS UNDERTAKEN BY THE CITY; INCLUDING THE HOOVER AVENUE RECONSTRUCTION PROJECT, IMPROVEMENTS TO THE CITY'S WATER TREATMENT PLANT AND CONSTRUCTION OF AN EQUALIZER TANK FOR THE SEWAGE FACILITIES; STATING THAT REALISTIC COST ESTIMATES HAVE BEEN MADE FOR THE LOAN PROJECT, AUTHORIZING THE PAYMENT OF OTHER CAPITAL PROJECTS UPON APPROPRIATE AMENDMENT HERETO AND STATING THE ESTIMATED PROJECT COMPLETION DATE; STATING THE REALISTIC ESTIMATED USEFUL LIFE OF THE LOAN PROJECT FOR WHICH SAID NOTE IS ISSUED; DIRECTING THE PROPER OFFICERS OF THE GOVERNING BODY TO PREPARE, CERTIFY AND FILE THE REQUIRED DEBT STATEMENT AND BORROWING BASE CERTIFICATE; COVENANTING THAT THE CITY SHALL INCLUDE THE AMOUNT OF ANNUAL DEBT SERVICE IN ITS BUDGET FOR EACH FISCAL YEAR; STATING THE NOTES TO BE A GENERAL OBLIGATION OF THE CITY EVIDENCING NON-ELECTORAL DEBT; FOR THE NOTE, PROVIDING FOR A FULLY REGISTERED NOTE, DATE OF THE NOTE, INTEREST PAYMENT DATES, PROVISIONS FOR REPAYMENT PRIOR TO MATURITY, MATURITY DATE AND STATED PRINCIPAL INSTALLMENT AMOUNTS AND FIXING THE RATE OF INTEREST ON SUCH NOTE; AUTHORIZING THE PROPER OFFICERS OF THE CITY TO CONTRACT WITH A BANK OR BANK AND TRUST COMPANY FOR ITS SERVICES AS SINKING FUND DEPOSITORY, PAYING AGENT AND REGISTER AND STATING A COVENANT AS TO PAYMENT OF PRINCIPAL AND INTEREST WITHOUT DEDUCTION FOR CERTAIN TAXES; PROVIDING FOR THE EXECUTION OF THE NOTES; APPROVING THE FORM OF THE NOTES AND, IF APPLICABLE, PROVIDING FOR A CUSIP NUMBER TO BE STATED ON THE NOTE; AWARDING SUCH NOTE AT PRIVATE SALE AND STATING THAT SUCH PRIVATE SALE IS IN THE BEST FINANCIAL INTEREST OF THE CITY; CREATING A SINKING FUND AND APPROPRIATING ANNUAL AMOUNTS FOR PAYMENT OF DEBT SERVICE; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE CITY TO CERTIFY AND TO FILE WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT CERTIFIED COPIES OF THE NECESSARY PROCEEDINGS, TO PREPARE AND FILE ANY STATEMENTS TO QUALIFY ALL OR ANY PORTION OF NON-ELECTORAL DEBT OR LEASE RENTAL DEBT OF THE CITY AS SELF-LIQUIDATING DEBT OR SUBSIDIZED DEBT AND TO PAY THE FILING FEES IN CONNECTION THEREWITH; DECLARING THE OUTSTANDING INDEBTEDNESS OF THE CITY, INCLUDING THE DEBT EVIDENCED BY THE NOTE, TO BE WITHIN THE DEBT LIMITATIONS OF THE DEBT ACT (DEFINED HEREIN); APPROVING THE FORM OF, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF A CERTAIN LOAN AGREEMENT; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE CITY TO DO ALL THINGS NECESSARY TO CARRY OUT THE ORDINANCE; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE CITY TO PAY CERTAIN FEES, EXPENSES AND ISSUANCE COSTS; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING INCONSISTENT ORDINANCES; AND EFFECTIVE DATE.

WHEREAS, the City of DuBois, Clearfield County, Pennsylvania (the "City") is a City of the Commonwealth of Pennsylvania (the "Commonwealth") and is governed by its City Council (the "Governing Body"); and

WHEREAS, Washington County Authority (the "Authority") is a body corporate and politic organized and existing under the provisions of the Pennsylvania Municipality Authorities Act of 1945, P.L. 382, as amended (the "Act"); and

WHEREAS, in carrying out its corporate purposes, the Authority has heretofore established a program (the "Program") which provides a source of funds from which to make loans to any county, city, town, municipal authority, school district, or any other governmental unit created under the laws of the Commonwealth of Pennsylvania to finance or refinance the costs of construction of public works and infrastructure and the acquisition of equipment and rolling stock for projects within the Commonwealth of Pennsylvania and has funded the Program by the issuance of the Authority's Capital Funding Revenue Bonds (Capital Projects and Equipment Acquisition Program), Series of 1999 (the "Bonds"); and

WHEREAS, the City proposes to make application to the Authority for a borrowing under the Program (hereinafter, the "Loan"), in an amount of Five Million Forty Thousand Dollars (\$5,040,000), in order to provide funds to pay the costs of general infrastructure improvements and building improvements undertaken by the City, including the Hoover Avenue reconstruction project, improvements to the City's water treatment plant and construction of an equalizer tank for the sewage facilities (the "Loan Project"); and

WHEREAS, in connection with the making of the Loan and the financing by the Authority of the Loan Project, the City intends to enter into a Loan Agreement (the "Loan Agreement") with the Authority and pursuant thereto to issue, execute and deliver to the Authority the City's General Obligation Note, Series of 2002 in the principal amount of Five Million Forty Thousand Dollars (\$5,040,000) (referred to herein as the "Note"); and

WHEREAS, the City has received from the Authority a written proposal, dated August 12, 2002 and accepted by the City on August 12, 2002, a true copy of which is attached hereto as "EXHIBIT A" (the "Note Purchase Proposal") for, *inter alia*, the purchase of the Note; and

WHEREAS, the Governing Body of the City desires the Note Purchase Proposal, to enter into the Loan Agreement, to award the Note to the Authority, at private sale, and to incur non-electoral debt evidenced by the Note, all in connection with the Loan Project;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF DUBOIS, PENNSYLVANIA, PURSUANT TO THE PENNSYLVANIA LOCAL GOVERNMENT UNIT DEBT ACT, 53 PA CONS. STAT. §8001 ET SEQ., AS AMENDED (THE "DEBT ACT"), AS FOLLOWS:

Section 1. Authorizing Project; Incurrence of Debt; Amount and Purpose of Notes; Estimated Project Completion Date. The Governing Body of the City hereby authorizes and directs the undertaking of the Loan Project and the incurring of non-electoral debt through the issuance of the City's General Obligation Note, Series of 2002 in the principal amount of Five Million Forty Thousand Dollars (\$5,040,000) to provide funds to pay the costs of the Loan Project.

Realistic cost estimates have been obtained by the City for the Loan Project through estimates made by qualified persons, as required by Section 8006 of the Act.

The City hereby reserves the right to undertake components of the Loan Project in such order and at such time or times as it shall determine and to allocate the proceeds of the Notes and other available moneys to the final costs of the Loan Project in such amounts and order of priority as it shall determine; but the proceeds of the Notes shall be used solely to pay the "costs", as defined in the Act, of the Loan Project described herein or, upon appropriate amendment hereto, to pay the costs of other capital projects for which the City is authorized to incur indebtedness.

The estimated completion date for the Loan Project is August 1, 2005.

Section 2. Realistic Estimated Useful Life. The realistic estimated useful life of the Loan Project is estimated to be in excess of 30 years and the principal amount of the Note equal to the separate cost of the Loan Project having a shorter useful life than the period during which

the Note will be outstanding has been scheduled to mature prior to the end of such useful life, and the balance prior to the end of the longest useful life.

Section 3. Debt Statement and Borrowing Base Certificate. The Mayor or City Manager (or other authorized officers or officials of the City) is hereby authorized and directed to prepare and certify a debt statement required by Section 8110 of the Debt Act and a Borrowing Base Certificate.

Section 4. Covenant to Pay Note. It is covenanted with the registered owners from time to time of the Notes that the City shall (i) include the amount of the debt service for the Note for each fiscal year in which the sums are payable in its budget for that year, (ii) appropriate those amounts from its general revenues for the payment of the debt service, and (iii) duly and punctually pay, or cause to be paid, from its sinking fund or any other of its revenues or funds the principal of, and the interest on, the Note at the dates and places and in the manner stated in the Note according to the true intent and meaning thereof. For such budgeting, appropriation and payment, the City pledges its full faith, credit and taxing power. As provided by the Debt Act, this covenant shall be specifically enforceable.

Section 5. Description of Note; Principal Installment Schedule; Prepayment of Note Prior to Maturity. The Note shall be a general obligation note of the City, shall evidence non-electoral debt of the City, shall be in fully registered form without coupons, shall be numbered and be in the maximum principal amount stated in Section 1 above, shall be dated as of the date of its issuance, and shall bear interest from the dates on which amounts are advanced, which interest is payable at the rates, provided herein, until maturity or redemption, all as set forth in the Note Purchase Proposal attached hereto as "EXHIBIT A" and made a part hereof.

Interest Payments

The Note will bear interest at the fixed rate or variable rate as set forth herein and in the Note Purchase Proposal attached hereto; *provided, however*, if interest on either of the Notes is at the variable rate, such rate shall not exceed the maximum rate of 25% per annum, all in accordance with the provisions of the Note Purchase Proposal attached hereto.

Fixed Rate: During any period when the Authority is not obligated to make variable rate payments under a certain swap agreement between the Authority and Ambac Financial Services, L.P. dated as of November 30, 1999 (the "Swap Agreement"), the fixed rate per annum will be equal to (a) the interest rate on the Bonds, plus (b) the Additional Participant Cost Component (as such term is defined in the Loan Agreement hereinafter referred to).

Variable Rate: During the period when the Authority is obligated to make variable rate payments under the Swap Agreement, the variable rate per annum determined and reset weekly equal to (a) the Weekly Rate, calculated as provided in the Authority's Indenture securing the Bonds, plus (b) the Additional Participant Cost Component (as such term is defined in the Loan Agreement hereinafter referred to).

Interest on the Note will be payable monthly, commencing four (4) Business Days prior of the first day of the month in which the City receives its first disbursement from the Reservation Account established under the Authority's Indenture securing the Bonds, and thereafter on the day which is four (4) Business Days prior to the end of each calendar month until maturity or redemption.

Redemption

The Note will be subject to optional redemption prior to maturity, in whole or in part, on the first Business Day of any month in an amount equal to the principal amount thereof, plus accrued and unpaid interest to the redemption date, upon thirty (30) days prior written notice as provided in the Loan Agreement hereinafter referred to. In the event of a redemption in part on either of the Notes, the principal installments on said note shall be reduced in inverse order of maturity, subject to the terms and provision of the Loan Agreement.

Principal Payments

The principal of the Note will be payable in monthly installments, commencing four (4) Business Days prior to the first day of the month following the month in which the City receives its first disbursement from the Reservation Account established under the Authority's Indenture securing the Bonds and thereafter on the day which is four (4) Business Days prior to the end of each calendar month until maturity on December 1, 2029, and will be payable in installments of principal as set forth in the Schedule attached to the Note Purchase Proposal attached hereto and made a part hereof. Amortization of the stated principal installments on the Note will amortize the Note on at least an approximately level annual debt service plan with the meaning of Section 8142(b)(1) of the Debt Act. The principal amortization schedule and the maximum annual debt service payments on the City's General Obligation Note, Series of 2002A in the principal amount of One Million One Hundred Thousand Dollars (\$1,100,000) (with and assumed maximum rate of 12%, based upon the Certificate Concerning Floating Rate Expectations of RRZ Public Markets, Inc., dated December 15, 1999) are as set forth in the schedule attached hereto as "SCHEDULE I-1." The principal amortization schedule and the maximum annual debt service payments on the City's General Obligation Note, Series of 2002B in the principal amount of Three Million Three Hundred Thousand Dollars (\$3,300,000) (with an assumed maximum rate of 12%, based upon the Certificate Concerning Floating Rate Expectations of RRZ Public Markets, Inc., dated December 15, 1999) are as set forth in the schedule attached hereto as "SCHEDULE I-2."

Section 6. Paying Agent, Sinking Fund Depository and Registrar; Payment of Principal and Interest Without Deduction for Taxes. The proper officers of the City are hereby authorized and directed to contract with J.P. Morgan Trust Company, National Association, having corporate trust offices in Pittsburgh, Pennsylvania, for its services as sinking fund depository, paying agent and registrar with respect to the Note (collectively referred to as the "Paying Agent") and such Trust Company is hereby appointed to act in such capacities with respect to the Note.

The principal or redemption price of, and interest on, the Note shall be payable in lawful money of the United States of America to the Paying Agent at its designated office or at the designated office of any additional or appointed alternate or successor paying agent or agents.

If the date for payment of the principal or redemption price of, and interest on, the Note shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the Commonwealth of Pennsylvania or in each of the cities in which the corporate trust office or paying office of the Paying Agent are located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as is made on the nominal date of payment.

The principal or redemption price of, and interest on, the note is payable without deduction for any tax or taxes, except inheritance and estate taxes or any other taxes now or hereafter levied or assessed on the Notes under any present or future laws of the Commonwealth of Pennsylvania, all of which taxes, except as above provided, the City assumes and agrees to pay.

The Note shall be transferable in the manner provided therein. The City and the Paying Agent may deem and treat the person in whose name the Note is registered as the absolute owner thereof for the purpose of receiving payment of, or on account of, the principal or redemption price thereof and interest thereon and for all other purposes, whether or not the Note shall be overdue. The City and the Paying Agent shall not be affected by any notice to the contrary.

Any corporation or association into which the Paying Agent, or any additional or appointed alternate or successor to it, may be consolidated, or any corporation or association resulting from any merger, conversation or consolidation to which the Paying Agent shall be a party, or any corporation or association to which the Paying Agent, or any additional alternate or successor to it, sells or otherwise transfers all or substantially all of its corporate trust business shall be the successor paying agent hereunder, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 7. Execution of Note. The Note shall be executed by manual or facsimile signature of the Mayor (or other authorized officer of the City) and shall have the corporate seal of the City or a facsimile thereof affixed thereto, duly attested by the manual or facsimile signature of the City Manager (or other authorized officer of the City), and the said officers are hereby authorized and directed to execute the Note in such manner. The Mayor (or other authorized officer of the City) is hereby authorized and directed to deliver, or cause to be delivered, the Note to the Authority, but only upon payment to the City of the proceeds of the Note and the satisfaction of the terms and conditions set forth in the Note Purchase Proposal and the Loan Agreement.

Section 8. Form of Note; CUSIP Numbers. The form of the Note shall be substantially as set forth in Exhibit A to the Note Purchase Proposal attached hereto and made a part hereof.

The Notes shall be executed in substantially the form as set forth therein with such appropriate changes, additions or deletions as may be approved by the officers executing the Notes in the manner provided in section 7 hereof; such execution shall constitute approval by such officers on behalf of the Governing Body.

The City, pursuant to recommendations promulgated by the Committee on the Uniform Security Identification Procedures (CUSIP) will, if applicable, cause a CUSIP number to be stated on the Note. No representation is made as to the accuracy of said number either as stated on the Note or as contained in any notice of prepayment, and the City shall have no liability of any sort with respect thereto. Reliance with respect to any prepayment notice with respect to the Notes may be placed only on the identification number stated thereon.

Section 9. Manner of Sale; Award of Notes; Bid Price; Interest Rate. The Governing Body of the City after due deliberation and investigation has found that a private sale by negotiation for the financing of the Loan Project under the Authority's Program is in the best financial interest of the City and based upon such finding the Governing Body of the City hereby accepts the Note Purchase Proposal of the Authority, approves the term of the Note and awards the Note, at private sale, to the Authority, upon the terms set forth in the Note Purchase Proposal, a copy of which is attached hereto and made a part hereof. As set forth in the Note Purchase Proposal, the Note is purchased at a bid price of par, plus accrued interest, if any, and bears interest as herein and therein set forth. Such details are hereby approved.

Section 10. Sinking Fund; Appropriation of Annual Amounts for Payment of Debt Service. There is hereby established a separate sinking fund for the City designated as "Sinking Fund 2002 General Obligations Note" (the "Sinking Fund") and into the sinking Fund there shall be paid, when and as required, all moneys necessary to pay the debt service on the Note, and the Sinking Fund shall be applied exclusively to the payment of interest covenanted to be paid upon the Note and to the principal thereof at maturity or prepayment prior to maturity and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid.

Section 11. Appropriation of Annual for Payment of Debt Services. The City hereby covenants and agrees that amounts sufficient to pay the principal of, and interest on, the Notes in each fiscal year in which the Note is outstanding shall be pledged to pay the debt service on the Note and such amounts, as set forth in the Note Purchase Proposal attached hereto and made a part hereof, are annually hereby appropriated to the Sinking Fund for the payment thereof.

The Paying Agent is hereby authorized and directed, without further action from the City, to pay from the Sinking Fund the principal of, and interest on, the Note as the same becomes due and payable in accordance with the terms thereof.

Section 12. Debt Proceedings. The Mayor (or other authorized officer of the City) is hereby authorized and directed to certify to and file with the Pennsylvania Department of Community and Economic Development, in accordance with the Debt Act, a complete and accurate copy of the proceedings taken in connection with the increase of debt authorized hereunder, including the debt statement and borrowing base certificate referred to hereinabove, to prepare and file any statements required by the Debt Act which are necessary to qualify all or any portion of non-electoral or lease rental debt of the City as self-liquidating or subsidized debt, and to pay the filing fees necessary in connection therewith.

All actions taken by the Governing Body of the City in connection with the advertisement of this Ordinance in accordance with the Debt Act are hereby ratified and confirmed and the Governing Body further authorizes and directs the advertisement of the enactment of this Ordinance in a newspaper of general circulation within the City, as required by the Debt Act.

Section 13. Debt Limitations. It is declared that the debt to be incurred hereby, together with any other indebtedness of the City, is not in excess of any applicable limitation imposed by the Debt Act upon the incurring of debt by the City which is evidenced by the Note.

Section 14. Approval of Loan Agreement. The City shall enter into the Loan Agreement substantially in the form presented to this meeting (a copy of which shall be filed with the records of the City) and such form, together with any changes and modifications approved in the manner provided in this Section is hereby approved. Upon receipt of approval of the Pennsylvania Department of Community and Economic Development to the incurrence of debt represented by the Notes, the Mayor (or other authorized officer of the City) is hereby authorized and directed to execute and deliver the Loan Agreement, in such form, subject to subsequent additions, changes, variations, omissions, insertions, and modifications, if any, as may be approved by such officer, with the advice of the City's Counsel and Bond Counsel, the execution of the Loan Agreement to be conclusive evidence of such approval, and the City Manager (or other authorized officer of the City) is hereby authorized and directed to affix thereto the corporate seal of the City and to attest the same and to make the Loan Agreement available for inspection by interested persons upon reasonable request.

Section 15. Incidental Actions. The proper officers of the City are hereby authorized, directed and empowered on behalf of the City to execute any and all agreements, papers, and documents and to do or cause to be done any and all acts and things necessary or proper for the carryings out of the purposes of this Ordinance, the Note, the Note Purchase Proposal and the Loan Agreement, including, but not limited to, any and all necessary action to comply with the Program Requirements of the Authority.

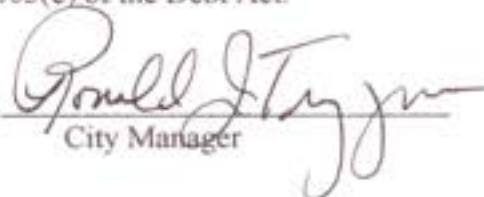
Section 16. Payment of Certain Fees, Expenses and Issuance Costs. The proper officers of the City are hereby authorized and directed to pay, or to cause the Paying Agent to pay, from the proceeds of the Notes or from such other funds of the City available for the purpose, certain fees and expenses associated with Program and the Loans and the costs of issuing the Notes at the time of delivery of the Notes to the Authority, against delivery of proper invoices therefor.

Section 17. Severability. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provisions, section, sentence, clause or part hereof, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

Section 18. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent herewith be and the same hereby are repealed.

Section 19. Effective Date. This Ordinance shall be effective in accordance with Section 8003(c) of the Debt Act.

ATTEST:


City Manager

APPROVED: _____

(Date)

PASSED BY COUNCIL:

August 12, 2002

(Date)

By: 

John H. Suplizio
Mayor and President of Council