

## COUNCIL BILL NO. 1832

INTRODUCED BY DIANE L. BERNARDOORDINANCE NO. 1735**AN ORDINANCE**

OF THE CITY OF DUBOIS AUTHORIZING AND PROVIDING FOR THE PAYMENT OF THE GUARANTEED WATER REVENUE BOND, NO. AR-1 IN THE PRINCIPAL AMOUNT OF \$3,731,000.00 ISSUED TO FINANCE THE COST OF CONSTRUCTING IMPROVEMENTS TO THE CITY'S WATER SYSTEM AND, IN PARTICULAR, THE CONSTRUCTION OF TWO WATER TANKS THROUGH THE BORROWING OF \$3,300,000.00 FROM S&T BANK, DUBOIS BRANCH, FOR THE PURPOSES OF REPAYING THE BALANCE OWING ON SAID BOND ISSUE TO THE UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF AGRICULTURE; CONFIRMING THE APPLICATION FOR LOAN ACCEPTED BY S&T BANK, DUBOIS BRANCH, FOR THE TERMS AND CONDITIONS OF SAID NOTE; PLEDGING THE REPAYMENT OF SAID NOTE; AUTHORIZING THE EXECUTION AND DELIVERY THEREOF; AUTHORIZING THE FILING FOR APPROVAL OF THE SUBSTITUTION OF THE LOAN FOR THE PREVIOUSLY-EXISTING USDA LOAN WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, IF NECESSARY; AND AUTHORIZING THE PAYMENT OF THE REQUIRED FILING FEE THEREFOR.

**WHEREAS**, the nonelectoral indebtedness of the City of DuBois, Clearfield County, Pennsylvania, was previously authorized to be increased in the total amount of up to \$3,731,000.00 through the issuance of a Guaranteed Water Revenue Bond, Series of 1996, No. AR-1 in the principal amount of up to \$3,731,000.00 for the purpose of financing improvements to the City's water system and, in particular, the construction of two water tanks in accordance with a Bond Ordinance No. 1559 adopted by the City of DuBois at second reading held May 28, 1996; and

**WHEREAS**, the City of DuBois desires to refinance the debt through the borrowing of \$3,300,000.00 from S&T Bank for the purposes of repaying the balance due currently to the United States of America, United States Department of Agriculture; and

**WHEREAS**, in order to render said Note effective as to the City as "excluded self-liquidating nonelectoral debt", it will be necessary, pursuant to Sections 8006 and 8026 of the Local Government Unit Debt Act, for the City Council to approve and adopt an ordinance authorizing the incurring of additional indebtedness through S&T Bank in the same amount as the current balance due to the United States of America, United States Department of Agriculture, which has previously been approved as excluded self-liquidating nonelectoral debt by the Pennsylvania Department of Community and Economic Development.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the City Council of the City of DuBois, and it is hereby ordained and enacted by authority of the same as follows:

**SECTION 1.** The City Council hereby ratifies, reconfirms and accepts the terms and conditions of the acceptance of its loan application by S&T Bank, DuBois Branch, for the loan to the City of up to \$3,300,000.00, with interest not to exceed 4.186% for three (3) years of the loan term to be adjusted to 250 basis points over the Federal Home Loan Bank of Pittsburgh's three-year weekly average rate at the beginning of the fourth and seventh years of the ten-year loan term with payments of interest and principal payable on the schedule set forth by the said S&T Bank, DuBois Branch.

In compliance with Section 8161 of Act 177 of 1996, the members of the City Council have determined that applying for a loan from S&T Bank is in the best interests of the local government unit because it will save the City of DuBois over \$100,000.00 as compared to the costs of its current obligation to the United States of America, the United States Department of Agriculture. Therefore, the general obligation Note in the amount of \$3,300,000.00 herein authorized to be issued and sold is hereby awarded and sold to S&T Bank, DuBois Branch, in

accordance with its acceptance of the City's loan application and the terms and conditions imposed by it to purchase the said Note at par; provided the said Note is dated the date of delivery thereof to S&T Bank and is in the form set forth in Section 5 of this Ordinance; and further provided that the proceedings have been approved by the Department of Community and Economic Development if such approval is required under the provisions of the Act.

In accordance with the aforesaid bid and subject to the approval of the authorizing proceedings by the Pennsylvania Department of Community and Economic Development, if necessary, the Mayor and President of City Council or the acting City Manager is hereby directed to deliver said Note when fully executed to S&T Bank, DuBois Branch.

**SECTION 2.** The excluded self-liquidating nonelectoral indebtedness of the City of DuBois be, and the same hereby is, initially authorized to be increased from time to time by an amount not to exceed at any time outstanding the sum of up to \$3,300,000.00. Said nonelectoral debt has already been established as self-liquidating and; therefore, excludable in accordance with Section 8026 of the Local Government Unit Debt Act pursuant to the previous approval granted by the Pennsylvania Department of Community and Economic Development as a result of the filing made in 1996.

**SECTION 3.** The total debt of up to THREE MILLION THREE HUNDRED THOUSAND DOLLARS (\$3,300,000.00), of excluded, self-liquidating nonelectoral debt of the City of DuBois shall be evidenced by a Note in the total principal amount of up to, but not exceeding \$3,300,000.00 in favor of S&T Bank, DuBois Branch, as set forth in the aforementioned loan application acceptance from S&T Bank, DuBois Branch.

The principal and interest on said Note shall be payable at the offices of S&T Bank, DuBois Branch, Liberty Boulevard, DuBois, PA, or by mail at P.O. Box 247, DuBois, PA 15801-0247.

**SECTION 4.** All of said Note, or any portion of the principal amount thereof, may be prepaid at any time. Any such prepayments may be made by the City without premium or penalty.

**SECTION 5.** The form of said Note to be issued from time to time hereunder shall be substantially as follows.

\* \* \* \* \*

CITY OF DUBOIS

CLEARFIELD COUNTY, PENNSYLVANIA

Promissory Note

\$3,300,000.00

DuBois, Pennsylvania

FOR VALUE RECEIVED, the CITY OF DUBOIS, a local government unit and body corporate and politic of the Commonwealth of Pennsylvania, hereby promises to pay to S&T Bank, DuBois Branch, P.O. Box 247, DuBois, PA 15801-0247, in lawful money of the United States of America, the principal sum of THREE MILLION THREE HUNDRED THOUSAND DOLLARS (\$3,300,000.00) on \_\_\_\_\_, together with interest to be paid from the date hereof on the unpaid balance of said principal sum at the rate of interest per annum (computed on the basis of a year of 365 days) equal to a fixed rate of 4.186% fixed for three (3) years, then to be adjusted to 250 basis points over the Federal Home Loan Bank of Pittsburgh's three-year weekly average rate at the beginning of the fourth and seventh years of said loan.

It is hereby certified that all acts, conditions, and things required to be or be done, happen, and be performed precedent or and in the issuance of this Note or in the creation of the debt of which it is evidence, have been done, happened, and been performed in regular and due form and manner as required by law; and that this Note, together with all other indebtedness of the City is not in excess of any conditional or statutory limitation.

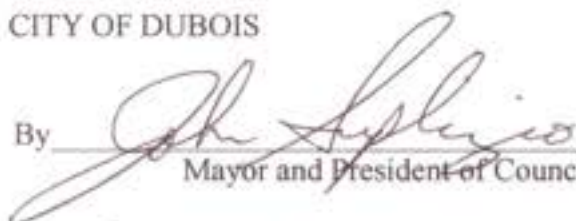
No recourse shall be had for the payment of principal or interest on this Note against any council member, officer, agent, attorney or employee, past, present or future of the City, or of any successor, as such, either directly or indirectly or through the City, it being understood and agreed that this Note is solely a corporate obligation of the City.

This Note evidencing a borrowing authorized by an Ordinance or Resolution of the City Council of the City of DuBois duly and properly adopted on December \_\_\_\_\_, 2008.

IN WITNESS WHEREOF, the CITY OF DUBOIS has caused this Note to be properly executed by the Mayor and President of City Council and the City Controller of the City and its corporate seal to be hereto affixed and attested to by the City Secretary as of the \_\_\_\_\_ day of December, 2008.

CITY OF DUBOIS

By

  
 Mayor and President of Council

By

  
 City Controller

ATTEST:

  
 City Secretary

\* \* \* \* \*

**SECTION 6.** It is hereby authorized and directed that said Note shall be executed on behalf of the City by the Mayor and President of the City Council and by the City Controller, and there shall be affixed thereto the City seal which shall be attested by the City Secretary, and said Note shall thereafter be valid and obligatory for all purposes, and shall be entitled to all benefits conferred thereon under the provisions of this Note Ordinance. The Mayor and President of City Council or the acting Mayor is hereby authorized and directed to deliver said Note to S&T Bank, at its DuBois Branch on Liberty Boulevard or by mail at P.O. Box 247, DuBois, PA 15801-0247.

**SECTION 7.** The City covenants with the holder of said Note, in compliance with Section 8104 of the Local Government Unit Debt Act, that it will budget and duly and punctually pay said principal and interest on said Note at the times and place and in the manner stated in said Note according to the true intent and meaning thereof, and for such budgeting, appropriation and payment, the City pledges its full faith and credit, revenues and taxing power. This covenant shall be specifically enforceable.

**SECTION 8.** The City covenants that it has already completed the construction of two water tanks which is the project for which the original financing from the United States of America, United States Department of Agriculture was secured, all in accordance with the plans and specifications and reports of the City's consulting firm as approved by the Pennsylvania Department of Community and Economic Development.

The City further covenants to levy and assess upon all persons and property subject to taxation for City purposes, an annual tax in each of the fiscal years that said Note shall remain outstanding, of so many mills as will yield amounts which, together with all other available general revenues of the City, including, specifically, those of the City's water and sewer systems, shall be applied exclusively to said debt service charges on said Note as the same shall from time to time become due and payable. The collection of said tax, if any is necessary, shall commence with the fiscal year 2009.

In addition to the aforementioned, the principal of and interest on said Note to be issued pursuant to the aforementioned covenant shall first be payable out of the receipts and revenues of the City derived from the water rates and charges levied and collected by the City for the use of the Water System, including all payments of water charges from customers outside of the corporate boundaries of the City of DuBois through private water supply contracts or as a result of rates approved by the Commonwealth of Pennsylvania, Public Utility Commission, after first paying therefrom the cost of operating, maintaining and repairing said Water System and such net receipts and revenues shall be pledged to such payments, and said Note shall constitute a first lien against such net receipts and revenues so pledged, the payment of the principal and interest on said Note will be guaranteed by the City in the event and to the extent of any deficiency at any time in said pledged net receipts and revenues, and, accordingly, the City will declare that said Note shall be a general obligation of the City, for the prompt and full payment of all or any part of which, the full faith, credit and taxing power and resources of the City will be irrevocably pledged. This covenant shall be specifically enforceable and the City understands and intends that its pledge as above-stated of its full taxing power will be unlimited as to rate or amount.

**SECTION 9.** The required net moneys realized from the water rates and other charges, after payment of operating costs of the Water System, from taxes imposed hereunder (if any) and all other general revenue moneys of the City otherwise usable and required, and any required capitalized interest moneys from the Construction Account, shall be payable to S&T Bank, DuBois Branch, at the times due in accordance with the attached schedule.

**SECTION 10.** The City Council has already filed the necessary documentation with the Pennsylvania Department of Community and Economic Development to have the original debt with the United States of America, United States Department of Agriculture approved as nonelectoral debt of the City with up to \$3,371,000.00 thereof being exercised as to the City as self-liquidating nonelectoral debt on the basis that the net water service charges furnished by the City's Water Systems, together with all water service payments guaranteed by customers of the City's Water System outside of the corporate boundaries of the City of DuBois, are sufficient to pay the total principal and interest on the Note that is anticipated to retire the Note. On this basis, it is hereby declared that the net nonelectoral debt (not excluded) of the City to be incurred hereunder, as represented by the Notes and subsequently the Note shall be \$0.00 and the self-liquidating nonelectoral debt (excluded) of the City to be incurred hereunder shall initially be up to \$3,300,000.00, which together with all presently existing net debt of the City will not be in excess of the constitutional limitations as set forth in the Local Government Unit Debt Act. The Mayor and President of City Council, the City Controller, and the City Secretary are hereby further directed to prepare, execute and verify under oath a "Debt Statement" of the City if necessary in order to obtain approval to substitute this Note for the previous Note with the United States of America, United States Department of Agriculture, and to submit the same, together with an executed "Application for Approval" and executed "Debt Statement" and executed "Borrowing Base Certificate" and executed "Self-Liquidating Debt Exclusion Certificate" for the Note and the necessary filing fee to the Pennsylvania Department of Community and Economic Development pursuant to the Local Government Unit Debt Act if an additional filing should be required. The previous approval by the Pennsylvania Department of Community and Economic Development, the "Certificate of Approval" and the "Self-Liquidating Debt Exclusion Certificate" have already been filed with the Records of the City in accordance with the Local Government Unit Debt Act. The City Council previously approved and adopted the Consulting Firm's cost estimates and submitted those reports to the Pennsylvania Department of Community and Economic Development in order to receive the previous approval. Said officers are also hereby further authorized and directed to perform all other acts and do all other things necessary to obtain any additional approval of the Note with S&T Bank and perfect such exclusion should the same be necessary.

**SECTION 11.** All moneys derived from the proceeds of the loan and evidenced by the Note, including the payment of interest on the Note and repayment of principal as provided herein, shall be deposited in a sinking fund to be established in accordance with the provisions of the Local Government Unit Debt Act and the S&T Bank, DuBois Branch, shall be the sinking fund depository required to be appointed under said Act. The proper and appropriate officers of the City are hereby authorized and directed to contract for the services of the S&T Bank, DuBois Branch, as a sinking fund depository and to perform all actions necessary to comply with the requirements for the establishment of a sinking fund and the appointment of a sinking fund depository under the provisions of the Local Government Unit Debt Act.

**SECTION 12.** The City Council has previously constructed two water tanks in accordance with the plans and specifications and reports previously provided by Lee-Simpson Engineers, the Consulting Firm for the City on those projects, with said debt incurred from the United States of America, United States Department of Agriculture and with said projects to have an estimated useful life in excess of forty (40) years.

**SECTION 13.** The proper and appropriate officers of the City are also hereby authorized and directed to perform any and all other acts necessary and proper to be done as required by the Local Government Unit Debt Act, in connection herewith.

**SECTION 14.** All other ordinances or resolutions or parts of ordinances or resolutions not in accordance with this Note Ordinance are hereby repealed insofar as they affect this Note Ordinance.

**SECTION 15:** This Note Ordinance shall take effect five (5) days after the second and final advertisement of its adoption.

**ORDAINED AND ENACTED** into law by the City Council of the City of DuBois in lawful session assembled this 18<sup>th</sup> day of December, 2008.

CITY OF DUBOIS

By  \_\_\_\_\_  
Mayor and President of City Council

ATTEST:

 \_\_\_\_\_  
City Secretary

APPROVED:

 \_\_\_\_\_  
City Controller

 \_\_\_\_\_  
City Solicitor