

COUNCIL BILL NO. 1951**INTRODUCED BY: EDWARD WALSH****ORDINANCE NO. 1851****AN ORDINANCE**

AUTHORIZING THE INCURRING OF NONELECTORAL DEBT BY THE ISSUANCE OF A GENERAL OBLIGATION NOTE IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000.00) FOR THE PURPOSE OF COMPLETING IMPROVEMENTS TO THE DUBOIS PUBLIC WATER SYSTEM IN ACCORDANCE WITH THE CAPITAL IMPROVEMENT PLAN AND THE SOURCE WATER PROTECTION PLAN TO INSURE THAT THE DUBOIS PUBLIC WATER SYSTEM REMAINS IN COMPLIANCE WITH ALL LOCAL, STATE AND FEDERAL REGULATIONS; COVENANTING TO PAY, AND PLEDGING UNLIMITED TAXING POWER FOR THE PAYMENT OF, THE NOTE; ESTABLISHING A SINKING FUND AND APPOINTING A SINKING FUND DEPOSITORY; FIXING THE FORM, INTEREST RATES, MATURITY, REDEMPTION AND OTHER PROVISIONS FOR THE PAYMENT THEREOF; ACCEPTING A PROPOSAL FOR THE PURCHASE OF THE NOTE; AUTHORIZING A FILING OF REQUIRED DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; RATIFYING AND DIRECTING CERTAIN ACTIONS OF OFFICERS; AND MAKING CERTAIN OTHER COVENANTS AND PROVISIONS IN RESPECT OF THE NOTE.

WHEREAS, the Members of Council (the "Governing Body") of the City of DuBois (the "Local Government Unit") deem it advisable to incur nonelectoral indebtedness, pursuant to the Local Government Unit Debt Act (the "Act"), for the funding of the cost of acquiring and constructing capital improvements to the City of DuBois Public Water System and the costs of issuing the Note.

WHEREAS, NexTier Bank (the "Purchaser") has presented a written proposal (the "Purchase Contract"), attached hereto as Exhibit "A", to purchase the Note (defined hereinafter) to be issued by the Local Government Unit in order to achieve the financing of the Projects; and

NOW, THEREFORE, it is hereby enacted that:

Section 1 – Authorization

1.01. The Local Government Unit hereby authorizes the incurrence, and the increase of, nonelectoral indebtedness in the principal amount of up to \$4,500,000.00, to be evidenced by a general obligation note (the "Note"), in substantially the form attached hereto as Exhibit "B", in order to pay the costs of the Projects. The Note will be dated the date of delivery, and will bear interest at the rates described in the Purchase Contract and the Loan Agreement (hereinafter defined), and will be payable (at maturity or upon earlier redemption) on the date and/or at the times, shown within the Purchase Contract. Furthermore, the Note will be issued subject to, and its terms and conditions of payment and security further delineated by and under a loan agreement (the "Loan Agreement") substantially incorporating the terms and conditions of the Purchase Contract. The Loan Agreement, substantially in such form as the Designated Officers and the Local Government Unit's Solicitor shall approve.

1.02. Reasonable estimates of the costs of the Projects, which are not less than the principal amount of the indebtedness authorized hereby, together with the useful life of the capital assets financed and refinanced, have been obtained with the assistance of engineers, architects, financial advisors and other persons qualified by experience. Nothing contained herein shall prohibit the Governing Body, under proper enactment of an ordinance and compliance with all provisions of law, from amending, adding to, subtracting from, substituting for or otherwise altering the Projects undertaken hereby.

1.03. The Mayor, Manager, Controller and Secretary or their duly elected and acting successors (the "Designated Officers") are hereby authorized and directed to execute and deliver such documents, and to do and perform all acts necessary and proper for the issuance and further security of the Note, including its execution and sealing and delivery to the Purchaser. The Designated Officers are further authorized and directed to undertake and perform, or cause to be undertaken or performed, all the ordinary duties of the Local Government Unit (and the same are hereby specifically approved) which may be required to effectuate the Projects.

1.04 The Designated Officers are hereby further authorized and directed to provide to the Purchaser a copy of the audited financial statements of the Local Government Unit while the Note is outstanding.

1.05 The Local Government Unit hereby covenants and agrees to comply with the conditions and/or requirements of the Purchaser set forth in the Purchase Contract within Exhibit "A" attached hereto.

Section 2 – Preparation of Debt Statement

2.01. As required by §8110 of the Act, the Designated Officers of the Local Government Unit shall prepare, execute and acknowledge the Debt Statement, and its accompanying Borrowing Base Certificate and shall file such documents, along with a certified copy of this Ordinance and proofs of publication of required notices, with the Pennsylvania Department of Community and Economic Development (the "Department") to enable the Department to certify its approval to issue, sell and deliver the Note.

Section 3 – Security and Payment of the Note.

3.01. The Note shall be a general, full faith and credit obligation of the Local Government Unit. The Local Government Unit hereby covenants with the Purchaser and with subsequent holders, from time to time, of the Note that it will (a) include the amount of the debt service for each fiscal year in which any installment of principal or interest is payable in its budget for that year, (b) appropriate such amounts to the payment of such debt service and (c) duly and punctually pay or cause to be paid the principal of and interest on the Note on the dates, at the place, and in the manner stated therein according to the true intent and meaning thereof. For such budgeting, appropriation and payment of the Note, the Local Government Unit hereby irrevocably pledges its full faith, credit and taxing power. The exact amounts of debt service payable in respect of the Note are set forth in Exhibit "B".

3.02. The Local Government Unit does hereby create, and orders to be established (in its name and identified by reference to the Note), a Sinking Fund for the payment of the Note with the Purchaser and does further covenant to maintain such Sinking Fund in accordance with the Act, until the Note is paid in full. A Designated Officer is hereby authorized and directed to contract with the Bank for its services in such capacity.

Section 4 – Tax Covenants

4.01. The Local Government Unit hereby covenants that no part of the proceeds of the Note will be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably expected on the date of the issuance of the Note, would have caused the Note to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the Regulations thereunder applicable to the Note and that it will comply with the requirements of that Section and the Regulations throughout the term of the Note.

4.02. If: (a) the principal amount of the Note plus the aggregate principal amount of all other tax-exempt obligations issued and to be issued by or on behalf of the Local Government Unit during the current calendar year exceeds \$5,000,000.00; and if (b) the gross proceeds of the Note are invested at a yield greater than the yield on the Note; and if (c) the gross proceeds of the Note are not expended or deemed to have been expended either within six months from the date of issuance, or, if the Projects are construction projects, within two years from the date of issuance (and according to certain periodic expenditure thresholds), all pursuant to §1.148.7 of the Regulations, the Local Government Unit covenants that it will rebate to the U. S. Treasury, at the times and in the manner required by the Code, the difference (if a positive number) between the investment income received on the Note proceeds and the investment income that would have been earned had the Note proceeds been invested at the yield of the Note.

4.03. The Local Government Unit hereby designates the Note as a Qualified, Tax Exempt Obligation pursuant to Section 265(b)(3) of the Code and represents that the total amount of obligations designated and to be designated by or on behalf of the Local Government Unit during the current calendar year does not and is not expected to exceed \$10,000,000.00.

4.04 The Local Government Unit will file IRS Form 8038-G and any other forms or information required by the Code or the Regulations to be filed with the Internal Revenue Service in order to further ensure the exclusion of the interest on the Note from gross income tax for federal income tax purposes.

Section 5 – Award

After due consideration of sundry factors, including professional assistance and current market conditions, the Local Government Unit hereby: (1) determines that a private sale by negotiation of the Note is in the best financial interest of the Local Government Unit; and (2) authorizes the Designated Officers (or their appropriate successors acting by reason of absence or other incapacity), in their sole discretion, to award the sale of the Note (or a portion thereof) to the Purchaser, by means of the execution of and delivery to the Purchaser of, the Purchase Contract. The execution and delivery of the Purchase Contract is hereby ratified and confirmed.

Section 6 – Appointment of Professionals


The Local Government Unit does hereby appoint Gleason, Cherry & Cherry, LLP as Note Counsel in connection with the issuance of the Note and the financing of the Projects.

Section 7 – Ordinance a Contract

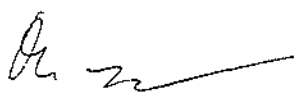
Upon the Local Government Unit’s execution of the Purchase Contract, this Ordinance, together with the Loan Agreement relating thereto, and when executed and delivered, shall be deemed to be a contract with the holders, from time to time, of the Note.

Duly enacted by the Governing Body of the Local Government Unit, in lawful session assembled, on the 14th day of September, 2020.

ATTEST:



City Manager

By: 

Edward L. Walsh
Mayor & President of Council

PASSED BY COUNCIL:

9/14/20

APPROVED: 