

RESOLUTION NO. R 023 98

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BOND ANTICIPATION NOTES OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE WASTEWATER COLLECTION AND TRANSMISSION SYSTEM OF THE WEST REHOBOTH EXPANSION OF THE DEWEY BEACH SANITARY SEWER DISTRICT; AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH

WHEREAS, pursuant to Title 9, Delaware Code, Section 7001(a) the County has all powers which under the Constitution of the State, it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute (the "Home Rule Power");

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapters 65 and 67, the County has authorized the construction and equipping of the Wastewater Collection and Transmission System of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District (the "Project");

WHEREAS, pursuant to Title 9, Delaware Code, Chapter 67, the County adopted Ordinance 991 on November 22, 1994 (the "Bond Ordinance"), which authorizes the issuance of general obligations of the County in the aggregate principal amount of up to \$39,223,000 to finance the costs of the above-described Project and for the other purposes described therein;

WHEREAS, pursuant to the Bond Ordinance, the County has issued \$29,224,000 aggregate principal amount of such bonds; and

WHEREAS, acting pursuant to Title 9, Delaware Code, Section 6704(j), the County desires to issue its Bond Anticipation Notes to provide funds for the construction of the Project in anticipation of the issuance of bonds to repay said Notes.

NOW THEREFORE BE IT RESOLVED BY THE COUNTY OF SUSSEX:

Section 1. Amount and Purposes of Bond Anticipation Notes. Acting pursuant to Title 9, Delaware Code, Section 6704 (j), Sussex County shall issue its negotiable obligations in the maximum aggregate principal amount not to exceed \$9,999,000 (the "Bond Anticipation Notes") to finance or refinance a portion of the cost of the construction and equipping of the Project.

The monies raised from the sale of the Bond Anticipation Notes (including the investment earnings thereon) after the payment of the costs of issuance, shall be held in one or more separate bond proceeds accounts and shall be expended only for the purposes authorized herein or as may otherwise be authorized by subsequent action by County Council. Authorized purposes include the costs of planning, constructing, acquiring and equipping the Project or any portion thereof; interest on the Bond Anticipation Notes and any interim financing during the construction period and for a period of up to six months following the estimated date of completion; the reasonable costs of issuance of the Bond Anticipation Notes and any interim financing; the repayment of temporary loans incurred with respect to the Project; and the reimbursement of authorized costs previously expended by the County from other funds.

Section 2. Security for the Bond Anticipation Notes. The principal, interest, and premium, if any, on the Bond Anticipation Notes are secured by a pledge of ad valorem taxes on all real property subject to taxation by the County without limitations as to rate or amount and, pursuant to Title 9, Delaware Code, Section

6706, the full faith and credit of the County is pledged to such payment. The Bond Anticipation Notes shall contain a recital that they are issued pursuant to Title 9, Delaware Code, Chapter 67, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. While the Bond Anticipation Notes are backed by the County's full faith and credit, it is expected that the debt service on the bonds which will be issued to retire the Bond Anticipation Notes will be paid from revenues of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Section 3. Terms of the Bond Anticipation Notes. The Bond Anticipation shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Resolution and otherwise as the County Administrator shall determine to be in the best interests of the County. The Bond Anticipation Notes shall bear interest at such rate or rates and shall mature in such amounts and at such times, not exceeding 2 years, and shall be subject to redemption as the County Administrator shall determine. The principal and interest due upon maturity of the Bond Anticipation Notes shall be paid from the proceeds of Bonds to be issued pursuant to the Bond Ordinance or other temporary financing to be provided by the County.

Section 4. Sale of the Bond Anticipation Notes. The Bond Anticipation Notes shall be sold in a public or privately negotiated sale upon such terms and conditions as the County Administrator shall determine shall be in the best interests of the County.

Section 5. Details of the Bond Anticipation Notes. The County Administrator is authorized to determine the details of the Bond Anticipation Notes including the following: the date or dates of the Bond Anticipation Notes; provisions for either serial or term bonds; sinking fund or other reserve fund requirements; due dates of the interest thereon; the form of the Bond Anticipation Notes; the denominations and designations of the Bond Anticipation Notes; registration, conversion and transfer provisions; provisions for the receipt, deposit and investment of the proceeds of the Bond Anticipation Notes; provisions for the replacement of lost, stolen, mutilated or destroyed Bond Anticipation Notes; and provisions for issuing uncertificated obligations and all procedures appropriate for the establishment of a system of issuing uncertificated debt. The Bond Anticipation Notes shall be executed by the manual or facsimile signature of the County Administrator, shall contain an impression of the County Seal or a facsimile thereof and shall be attested by the manual signature of the County Clerk.

Section 6. Debt Limit. It is hereby determined and certified, as of the effective date hereof, that the issuance of the Bond Anticipation Notes is within the legal debt limit of the County.

Section 7. Non-Arbitrage Certificate and Covenants.

(a) The County Administrator and the Director of Finance shall be the officials of the County responsible for the issuance of the Bond Anticipation Notes within the meaning of Section 1.148-2(b)(2) of the Regulations (hereinafter defined). The County Administrator and the Director of Finance shall also be the officials of the County responsible for the execution and delivery (on the date of the issuance of the Bond Anticipation Notes) of a certificate of the County (the "Arbitrage and Federal Tax Certificate") that complies with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder (the "Regulations"), and such officials are hereby authorized and directed to execute and deliver an Arbitrage and Tax Certificate to Bond Counsel on the date of the issuance of the Bond Anticipation Notes.

(b) The County shall set forth in the Arbitrage and Tax Certificate its reasonable expectations as to relevant facts, estimates, and circumstances relating to the use of the proceeds of the Bond Anticipation Notes or of any moneys, securities or other obligations to the credit of any account of the County, which may be deemed to be proceeds of the Bond Anticipation Notes pursuant to Section 148 of the Code or the Regulations (collectively, the "Bond Proceeds"). The County covenants and agrees with the registered owners of the Bond Anticipation Notes that the facts, estimates, and circumstances set forth in the Arbitrage and Tax Certificate will be based on the County's reasonable expectations on the date of the issuance of the Bond Anticipation Notes and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

(c) The County covenants and agrees with the registered owners of the Bond Anticipation Notes that it will not make, or permit to be made, any use of the Bond proceeds that would cause the Bond Anticipation Notes to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations and that it will comply with those provisions of Section 148 of the Code and the Regulations as may be applicable to the Bond Anticipation Notes.

(d) The County specifically covenants that it will comply with the provisions of the Code applicable to the Bond Anticipation Notes, including, without limitation, compliance with provisions regarding the timing of the expenditure of the proceeds, the use of such proceeds and the facilities financed with such proceeds, the restriction of investment yields, the filing of information returns with the Internal Revenue Service, and the calculation and rebate of certain earnings resulting from the investment of the proceeds. The County further covenants that it shall make such use of the proceeds, regulate the investment of the proceeds thereof and take such other and further actions as may be required to maintain the exclusion from gross income of the interest on the Bond Anticipation Notes for the purposes of federal income taxation. All officers, employees, and agents of the County are hereby authorized and directed to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bond Anticipation Notes as may be necessary or appropriate in connection herewith.

Section 8. Further Action.

The President of the County Council, the County Administrator, the Finance Director and the County Clerk are authorized and directed to take such other action on behalf of the County, as may be necessary or desirable to effect the adoption of this Resolution and the issuance and sale of the Bond Anticipation Notes and to provide for their security and to carry out the intent of this Resolution, including the publication of notices and advertisements and the execution and delivery of customary closing certificates.

Section 9. Effective Date. This Resolution shall become effective immediately upon its passage.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 023 98 ADOPTED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 1ST DAY OF DECEMBER, 1998.


Robin A. Griffith
Clerk of the County Council