

RESOLUTION NO. R 057 84

A RESOLUTION OF THE COUNTY COUNCIL OF THE GOVERNMENT OF SUSSEX COUNTY, DELAWARE, AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS FENWICK ISLAND SANITARY SEWER DISTRICT FACILITIES TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE

WHEREAS, it is necessary for the County Council (hereinafter called "Association") to raise a portion of the cost of such undertaking by issuance of its bonds in the principal cost of \$2,726,000.00, pursuant to the provisions of Chapter 65, Title 9, of the Delaware Code Annotated;

WHEREAS, the Association intends to obtain assistance from the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, et seq.) in the planning, financing, and supervision of such undertaking and to purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the association,

NOW, THEREFORE, in consideration of the premises, the association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds and containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983 (c)).

3. To provide for, execute, and comply with Form FmHA 400-4, "Nondiscrimination Agreement"; and Form FmHA 400-1, "Equal Opportunity Agreement" including an "Equal Opportunity Clause", which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.

4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the association (payable from the source of funds pledged to pay the bonds or any other legally permissible source) incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this Resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association, and default under any such instrument may be construed by the Government to constitute default hereunder.

6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, not permit others to do so, without the prior written consent of the Government.

7. Not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purposes in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.

8. To place the proceeds of the bonds on deposit in an account, in a bank, and in a manner approved by the Government.

9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.

10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance coverage including fidelity bonds as may be required by the Government.

12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof in such a manner as may be required by the Government, to provide the Government without its request, a copy of each such audit, and to make and forward to the Government such additional information and reports as it may from time to time require.

13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

14. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain FmHA's concurrence prior to refusing new or adequate services

to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the association or public body.

15. In the case of a grant in the sum not to exceed \$210,000.00, the association hereby accepts the grant under the terms as offered by the Government and that the President and Clerk of the association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant and the association hereby resolves to operate the facility under the terms as offered in said grant agreement').

The provisions hereof and the provisions of all instrument incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instruments, shall be binding upon the association as long as the bonds are held or insured by the Government. The provisions of sections 6 through 13 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling as between the association and the Government.

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I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 057 84 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 24TH DAY OF JULY, 1984.

Emogene P. Ellis
EMOGENE P. ELLIS
CLERK OF THE COUNTY COUNCIL