

**TOWN OF NUTTER FORT**

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WASTEWATER FACILITIES OF THE TOWN OF NUTTER FORT, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ACCEPTANCE BY THE TOWN OF FUNDING ASSISTANCE, SERIES 2022 IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,000,000 THROUGH THE WEST VIRGINIA SRF PROGRAM; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO ACCEPTANCE OF SUCH FUNDING; APPROVING, RATIFYING AND CONFIRMING THE FUNDING ASSISTANCE AGREEMENT RELATING TO SUCH FUNDING ASSISTANCE, SERIES 2022.

BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF NUTTER FORT:

WHEREAS, this Ordinance (together with any resolution supplemental hereto or amendatory hereof, or both, the “Ordinance”) is adopted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the “Act”), and other applicable provisions of law;

WHEREAS, the Town of Nutter Fort (the “Local Government”) is authorized and empowered by the Act to acquire, construct, improve, operate and maintain wastewater project consisting of the replacement of existing gravity collection system lines, together with all necessary appurtenances (the “Project”) and to finance the costs of the Project from grants or other funding assistance provided for the Project;

WHEREAS, the Local Government has submitted an application for the Project to the West Virginia Department of Environmental Protection (the “DEP”), and the West Virginia Infrastructure and Jobs Development Council (the “Council”);

WHEREAS, in reviewing the application for the Project, the DEP and the West Virginia Water Development Authority (the “Authority”) have determined to offer funding assistance to the Local Government for the Project through a principal forgiveness loan (the “Funding Assistance, Series 2022”) as provided in the Funding Assistance Agreement a copy of which is attached hereto and incorporated herein by reference (the “Funding Assistance Agreement”);

WHEREAS, the Funding Assistance Agreement has been presented to the Local Government;

WHEREAS, the capitalized terms used herein and not otherwise defined shall have the same meaning set forth in the Funding Assistance Agreement when used herein;

WHEREAS, the Local Government has complied with all terms and requirements set forth in the Funding Assistance Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this Ordinance be adopted, that the Funding Assistance Agreement be approved and ratified, that the exact principal amount, date, and other terms of the Funding Assistance, Series 2022 be fixed hereby in the manner stated herein, and that other matters relating to the Funding Assistance, Series 2022 be herein provided for.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF NUTTER FORT, AS FOLLOWS:**

Section 1. A. There is hereby authorized and ordered the implementation of the Project at an estimated cost not to exceed \$1,950,000 in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Funding Assistance, Series 2022 hereby authorized shall be applied to the costs of the Project.

The cost of the Project is estimated not to exceed \$1,950,000 of which up to \$1,000,000 will be obtained from the proceeds of the Funding Assistance, Series 2022; and \$950,000 will be obtained as a Council grant.

B. The Local Government will enter into contracts for the acquisition and installation of the Project, in amounts compatible with the financing plan submitted to the Authority and the DEP.

Section 2. The Local Government hereby ratifies, approves and accepts the Funding Assistance Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Funding Assistance Agreement by the Mayor of the Governing Body and the performance of the obligations contained therein, on behalf of the Local Government, are hereby authorized, approved and directed.

Section 3. The Local Government hereby affirms all covenants and representations made in the Funding Assistance Agreement and in the application to the DEP. The Local Government hereby agrees to comply with all covenants, conditions and requirements set forth in the Funding Assistance Agreement as set forth in Section 4.1 thereof and this Section 3 herein. The Local Government covenants as follows:

(a) The Local Government shall complete the Project, to the extent applicable, and operate and maintain the System in good condition;

(b) The Local Government shall provide written notice and request approval of the disposition of the assets to the Authority and the DEP of any sale or other disposal of the System as a whole or substantially as a whole; provided that if said sale or other disposition is to a non-governmental entity the Local Government shall obtain an appraisal of the assets purchased with the Funding Assistance, Series 2022 and remit to the Authority for deposit into the Clean Water State Revolving Loan Fund an amount equal to the then depreciated value of the assets purchased;

(c) The Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System;

(d) The Local Government will not render any free services of the System;

(e) To the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(f) The Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(g) The Local Government shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

(h) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(i) The Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider; and

(j) The Local Government shall submit all proposed change orders to the DEP for approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Funding Assistance, Series 2022 held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Funding Assistance, Series 2022 available due to project underruns.

Section 4. The DEP shall advance the proceeds of the Funding Assistance, Series 2022 from time to time upon receipt of a requisition evidencing the costs incurred. Such amounts advanced under the Funding Assistance Agreement shall be deemed forgiven on the 30th day of June in the fiscal year in which they were advanced.

Section 5. The Mayor and Recorder of the Governing Body are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Funding Assistance, Series 2022 hereby and by the Funding Assistance Agreement approved and provided for, to the end that the Funding Assistance, Series 2022 may be delivered to the Local Government pursuant to the Funding Assistance Agreement.

Section 6. The acquisition and construction of the Project, and the financing thereof with proceeds of the Funding Assistance, Series 2022 from the DEP and the Council are in the public interest, serve a public purpose of the Local Government and will promote the health, welfare and safety of the residents of the Local Government.

Section 7. The Local Government hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project and the Mayor of the Governing Body is hereby authorized and directed to execute and deliver all such contracts.

Section 8. Prior to issuance closing of the Funding Assistance, this Ordinance may be amended or supplemented in any way by supplemental resolution.

Section 9. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Exponent Telegram*, a newspaper of general circulation in the Town of Nutter Fort, together with a notice stating that this Ordinance has been adopted and that the Local Government contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

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