

TOWN OF FAIRVIEW

ORDINANCE AUTHORIZING THE DESIGN AND OTHER PRE-CONSTRUCTION ACTIVITIES RELATED TO THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN OF FAIRVIEW, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ACCEPTANCE BY THE TOWN OF FUNDING ASSISTANCE IN THE AGGREGATE PRINCIPAL AMOUNT OF \$300,000 THROUGH THE WEST VIRGINIA DWTRF PROGRAM; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO ACCEPTANCE OF SUCH FUNDING; APPROVING, RATIFYING AND CONFIRMING THE DESIGN FUNDING ASSISTANCE AGREEMENT RELATING TO SUCH FUNDING ASSISTANCE.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF FAIRVIEW:

WHEREAS, this Ordinance (together with any resolution supplemental hereto or amendatory hereof, or both, the "Ordinance") is adopted pursuant to the provisions of (i) Chapter 8, Article 19 and (ii) Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law;

WHEREAS, the Town of Fairview (the "Local Government") is authorized and empowered by the Act to design, acquire, construct, improve, operate and maintain water project consisting of a connection to the Monumental Public Service District, which will include a booster pump station and a new 6-inch main; repair and refurbishment of two existing water tanks, upgrade access roads, replace telemetry system and construct new water office and all necessary and related appurtenances (the "Project" and the design and other pre-construction activities shall be defined herein as the "Design Project") and to finance the costs of the Design Project from funding assistance provided for the Design Project;

WHEREAS, the Local Government has submitted an application for the Project and the Design Project to the West Virginia Bureau for Public Health (the "BPH"), the West Virginia Water Development Authority (the "Authority");

WHEREAS, in reviewing the application for the Design Project, the BPH and the Authority have determined to offer funding assistance to the Local Government for the Design Project through a principal forgiveness loan (the "Funding Assistance") as provided in the Design Funding Assistance Agreement a copy of which is attached hereto and incorporated herein by reference (the "Design Funding Assistance Agreement");

WHEREAS, the Design 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 Design Funding Assistance Agreement when used herein;

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

WHEREAS, the Council of the Local Government (the "Governing Body") deems it essential and desirable that this ordinance be enacted, that the Design Funding Assistance Agreement be approved and ratified, that the exact principal amount, date, and other terms of the Funding Assistance be fixed hereby in the manner stated herein, and that other matters relating to the Funding Assistance be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF FAIRVIEW, AS FOLLOWS:

Section 1. A. There is hereby authorized and ordered the implementation of the Design Project at an estimated cost not to exceed \$300,000. The proceeds of the Funding Assistance hereby authorized shall be applied to the costs of the Design Project.

B. The cost of the Project is estimated not to exceed \$3,500,000 of which it is estimated that \$300,000 will be obtained from the proceeds of the Funding Assistance, approximately \$867,000 will be obtained as future forgivable DWTRF Loan; approximately \$1,079,430 will be obtained from a future loan from the BPH; and \$1,000,000 will be received from a grant from the West Virginia Infrastructure and Jobs Development Council

Section 2. The Local Government has or will enter into contracts for the Design Project, in amounts compatible with the financing plan submitted to the Authority and the BPH.

Section 3. The Local Government hereby ratifies, approves and accepts the Design 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 Design 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 4. The Local Government hereby affirms all covenants and representations made in the Design Funding Assistance Agreement and in the application to the BPH. The Local Government hereby agrees to comply with all covenants, conditions and requirements set forth in the Design 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 Design 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 BPH 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 and remit to the Authority for deposit into the Drinking Water Treatment 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 BPH, 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 BPH 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 BPH for approval. The Local Government shall obtain the written approval of the BPH before expending any proceeds of the Funding Assistance 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 BPH before expending any proceeds of the Funding Assistance available due to underruns.

Section 5. The BPH shall advance the proceeds of the Funding Assistance from time to time upon receipt of a requisition evidencing the costs incurred. Such amounts advanced under the Design 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 hereby and by the Design Funding Assistance Agreement approved and provided for.

Section 7. The Design Project and the financing thereof with proceeds of the Funding Assistance from the BPH 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 8. The Local Government hereby approves and accepts all contracts relating to the financing, the Design Project and the Mayor of the Governing Body is hereby authorized and directed to execute and deliver all such contracts.

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 *Times West Virginian* a newspaper of general circulation in the Town of Fairview 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.

[Remainder of Page Intentionally Blank]

Section 10. This Ordinance shall be effective immediately following adoption of the same.

Passed on First Reading: June 14, 2022

Passed on Second Reading: June 21, 2022

Passed on Final Reading
Following Public
Hearing: July 12, 2022

TOWN OF FAIRVIEW



Mayor

CERTIFICATION

Certified as a true copy of an Ordinance duly enacted by the Council of Town of Fairview
on the 12th day of July, 2022.

Dated: October 18, 2022.

[SEAL]

Heather Little
Recorder

Town of Fairview
\$230,500 Funding Assistance
(West Virginia DWTRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE AND OTHER TERMS OF THE FUNDING ASSISTANCE, SERIES 2022 (WEST VIRGINIA DWTRF PROGRAM) OF THE TOWN OF FAIRVIEW; APPROVING AND RATIFYING THE FUNDING ASSISTANCE AGREEMENT; DESIGNATING A DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE FUNDING ASSISTANCE.

WHEREAS, the council (the “Governing Body”) of the Town of Fairview (the “Local Government”) has duly and officially adopted and enacted an ordinance, effective July 12, 2022 (the “Ordinance”), entitled:

ORDINANCE AUTHORIZING THE DESIGN AND OTHER PRE-CONSTRUCTION ACTIVITIES RELATED TO THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN OF FAIRVIEW, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ACCEPTANCE BY THE TOWN OF FUNDING ASSISTANCE IN THE AGGREGATE PRINCIPAL AMOUNT OF \$300,000 THROUGH THE WEST VIRGINIA DWTRF PROGRAM; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO ACCEPTANCE OF SUCH FUNDING; APPROVING, RATIFYING AND CONFIRMING THE DESIGN FUNDING ASSISTANCE AGREEMENT RELATING TO SUCH FUNDING ASSISTANCE.

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

WHEREAS, the Ordinance provides for the Funding Assistance in a principal amount not to exceed \$300,000 (the “Funding Assistance”) and has authorized the execution and delivery of the Funding Assistance Agreement relating to the Funding Assistance, including all schedules and exhibits attached thereto, by and among the Local Government, the West Virginia Water Development Authority (the “Authority”), and the West Virginia Bureau for Public Health (the

“BPH”) for the Funding Assistance (the “Funding Assistance Agreement”), all in accordance with Chapter 16, Article 13C and Chapter 8 Article 19 of the West Virginia Code of 1931, as amended (collectively, the “Act”);

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

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the “Supplemental Resolution”) be adopted, that the Funding Assistance Agreement be approved and ratified by the Local Government, that the exact principal amount and that other matters relating to the Funding Assistance be herein provided for; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF FAIRVIEW:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there is hereby authorized and ordered the Funding Assistance in the principal amount of \$230,500. The Funding Assistance shall be dated the date of delivery thereof and shall bear no interest. The principal amounts advanced under the Funding Assistance will be deemed forgiven on the 30th day of June in the fiscal year in which advanced. The Funding Assistance shall be deemed no longer Outstanding after the last advance is forgiven. The Funding Assistance may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the BPH, and otherwise in compliance with, the Funding Assistance Agreement. The Funding Assistance is not subject to an Administrative Fee.

Section 2. The Local Government does hereby authorize, approve, ratify and accept the Funding Assistance Agreement, copy of which is incorporated herein by reference, and the execution and delivery of the Funding Assistance Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Local Government, are hereby authorized, directed, ratified and approved. The Local Government hereby accepts and agrees to all covenants and representations made in the Funding Assistance Agreement and in the applications to the Authority and the BPH.

Section 3. The Local Government does hereby appoint and designate First Exchange Bank, Fairview, West Virginia, to serve as Depository Bank.

Section 4. The proceeds of the Funding Assistance shall be received from the BPH from time to time for payment of the costs of the Design Project, including, without limitation, costs of closing the Funding Assistance and related costs.

Section 5. The Mayor and the Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Funding Assistance hereby and by the Ordinance approved and provided for, to the end that the Funding Assistance may be delivered on or about October 18, 2022, to the Authority pursuant to the Funding Assistance Agreement.

Section 6. The Design Project and the financing thereof in part with proceeds of the Funding Assistance 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 does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

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Section 8. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 27th day of September, 2022.

TOWN OF FAIRVIEW

By:  _____

Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the Town of Fairview on the 27th of September, 2022.

Dated: October 18, 2022.

[SEAL]


Recorder

October 18, 2022

Town of Fairview
\$230,500 Funding Assistance
(West Virginia DWTRF Program/Forgivable)

Town of Fairview
Fairview, West Virginia

West Virginia Bureau for Public Health
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Ladies and Gentlemen:

We are counsel to Town of Fairview, a municipality in Marion County, West Virginia (the "Local Government"). As such counsel, we have examined a certified copy of proceedings and other papers relating to the authorization of a Funding Assistance Agreement dated October 18, 2022, including all schedules and exhibits attached thereto (the "Funding Assistance Agreement"), between the Local Government and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Bureau for Public Health (the "BPH"). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Funding Assistance Agreement and the Local Act.

The Funding Assistance is being provided for the purposes of (i) paying a portion of the costs of the Design Project; and (ii) paying costs of issuance and related costs.

We have also examined the applicable provisions of Chapter 8, Article 19 and Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the Ordinance enacted by the Local Government on July 12, 2022 as supplemented by Supplemental Resolution adopted September 27, 2022 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act, the Funding Assistance is authorized and the Funding Assistance Agreement has been undertaken. The Funding Assistance is forgivable at the end of each fiscal year in which funds are advanced for the Design Project.

Based upon the foregoing and upon my examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Funding Assistance Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The Funding Assistance Agreement inures to the benefit of the Authority and the BPH and cannot be amended so as to affect adversely the rights of the Authority or the BPH or diminish the obligations of the Local Government without the consent of the Authority and the BPH.

3. The Local Government is a duly organized and validly existing municipality, with full power and authority to complete the Design Project, to operate and maintain the System, to adopt or enact the Local Act and to enter into the Funding Assistance Agreement, all under the Local Statute and other applicable provisions of law.

4. The members and officers of the governing body of the Local Government have been duly and properly authorized and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Local Government in their respective capacities.

5. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Funding Assistance Agreement.

6. The execution and delivery of the Funding Assistance Agreement and the consummation of the transactions contemplated by the Funding Assistance Agreement and the Local Act, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Local Government, a breach of or default under any resolution, agreement or other instrument to which the Local Government is a party or any existing law, regulation, court order or consent decree to which the Local Government is subject.

7. The Local Government has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Local Government, the acceptance of the Funding Assistance, the Design Project, and the operation of the System, including, without limitation, all requisite permits, approvals, orders and certificates from the BPH and the West Virginia Infrastructure and Jobs Development Council.

8. To the best of our knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Funding Assistance Agreement or the Local Act, the Design Project, or the operation of the System.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,



STEPTOE & JOHNSON PLLC

ISSUE: Town of Fairview

Funding Assistance (West Virginia DWTRF Program) Phase I

ADDRESS: 407 Main Street, Fairview, WV 26570

COUNTY: Marion

PURPOSE OF ISSUE: ☒ New Money
☐ Refunding

Refunding issue(s) dated: NA

ISSUE DATE: 10/18/2022

RATE: 0.00% ADMIN FEE: NA

ISSUE AMOUNT: \$ 230,500.00

1st DEBT SERVICE DUE: NA

1st PRINCIPAL DUE: NA

1st DEBT SERVICE AMOUNT: NA

PAYING AGENT: NA

BOND COUNSEL: Steptoe and Johnson PLLC

UNDERWRITERS COUNSEL: Jackson Kelly

Contact Name: John Stump

Contact Name: Samme Gee

Phone: 304.353.8196

Phone: 304.340.1318

Email: john.stump@steptoe-johnson.com

Email: sgee@jacksonkelly.com

CLOSING BANK: _____

ESCROW TRUSTEE: _____

Contact Name: _____

Contact Name: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

KNOWLEDGEABLE ISSUER CONTACT:

OTHER: Burea for Public Health

Contact Name: Heather Tuttle

Contact Name: Christopher Thomas

Title: Recorder

Title: Technical Analyst

Phone: 304.449-1642

Phone: 304.352.5042

Email: townoffairview@gmail.com

Email: Christopher.W.Thomas@wv.gov

DEPOSITS TO MBC AT CLOSE: _____

Accrued Interest: _____

By: Wire _____

Capitalized Interest: _____

Check _____

Reserve Account: _____

In-house Transfer _____

Other: _____

REFUNDS & TRANSFERS BY MBC AT CLOSE:

To Escrow Trustee: _____

By: Wire _____

To Issuer: _____

Check _____

To Cons.Invest Fund: _____

IGT _____

To Other: _____

ISSUER NUMBERS:

BANK ID NUMBER: _____

CUSIP: _____

ACCOUNT NUMBER: _____

PROGRAM NUMBER: _____

NOTES: The Funding Assistance is forgivable. No accounts are set up at the Commission

FOR MUNIICPAL BOND COMMISSION USE ONLY:

Documents Required: _____

Transfers Required: _____