

INTRODUCED BY: Commissioner Paul Hertz
DATE INTRODUCED: May 9, 2023
PUBLIC HEARING DATE: May 23, 2023
PUBLIC HEARING TIME: 7:00 P.M.
ADOPTION DATE: May 23, 2023
EFFECTIVE DATE: Upon Adoption

ORDINANCE NO. 23-07

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A KENT COUNTY GENERAL OBLIGATION BOND IN AN AMOUNT NOT TO EXCEED \$722,856 FOR THE WHISPERING PINES MHP SEPTIC ELIMINATION PROJECT - PHASE II AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH

WHEREAS, pursuant to Title 9, Delaware Code Section 4110(a) Kent County Levy Court (the “County”), as the County government of Kent County, shall assume and have all powers which under the Constitution of the State of Delaware it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute (the “Statutory Authority”).

WHEREAS, acting pursuant to its Statutory Authority, the County desires to authorize the issuance of up to \$722,856 of its General Obligation Bond (Whispering Pines MHP Septic Elimination Project - Phase II) Series 2023-SRF (the “Bond”) to (i) finance or reimburse the County for the construction of Whispering Pines MHP Septic Elimination – Phase II project. The project scope is to eliminate existing onsite septic systems tanks in the Whispering Pines Mobile Home Park by providing connections for up to 47 mobile home lots to the existing Phase I gravity sewer system for treatment at the Kent County Regional Resource Recovery Facility. The scope includes 2,158 linear feet of 8” gravity main, 8 manholes, a duplex grinder pump station, a force main and paving restoration of disturbed areas. The budget includes impact fees for the 38 mobile home connections (the “Project”); and (ii) pay the costs of issuance of the Bond.

WHEREAS, the County has received a commitment for a loan to pay the costs for the Project from the Delaware Water Pollution Control Revolving Fund (acting by and through the State of Delaware Department of Natural Resources and Environmental Control) (“DNREC”).

WHEREAS, pursuant to Title 9, Delaware Code, Section 4111(a) the County is authorized to issue the Bond, and pursuant to Section 4111(d) to pledge its full faith and credit thereto, to finance the cost of any object, program or purpose for which the County is authorized to raise, appropriate or expend money.

WHEREAS, acting pursuant to the aforesaid authority the County desires to authorize the issuance of obligations of the County to finance the costs of the above described Project and for the other purposes described herein.

NOW THEREFORE THE KENT COUNTY LEVY COURT ORDAINS (AT LEAST FIVE SEVENTHS OF THE MEMBERS OF THE LEVY COURT CONCURRING HEREIN):

Section 1. Amount and Purpose of the Bond. Acting pursuant to Title 9, Delaware Code, Section 4111, the County shall issue its Bond in the maximum aggregate principal amount not to exceed \$722,856 to finance a portion of the cost of the Project, with the expectation that the full amount of \$722,856 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$0 upon Project completion. Security for the Bond. The principal, interest and premium, if any, on the Bond are to be paid by 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 4111, the full faith and credit of the County is pledged to such payment. The Bond shall contain a recital that it is issued pursuant to the Constitution and laws of the State and the County which recital shall be conclusive evidence of its legality, validity and the regularity of its issuance. Terms of the Bond. The Bond shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Ordinance and otherwise as the President of Levy Court shall determine to be in the best interests of the County. The Bond shall bear interest at such rate or rates and shall mature in such amounts at such times, not exceeding twenty (20) years from the expected date for the completion of the Project, and shall be subject to redemption as the President of Levy Court shall determine. Sale of the Bond. The Bond may be issued in one or more series and shall be sold in one or more public sales or private negotiated transactions upon such terms and conditions as the President of Levy Court shall determine shall be in the best interest of the County. It is anticipated that the Bond will be sold to the State of Delaware Water Pollution Control Revolving Fund (acting on their own behalf or by and through the Delaware Department of Natural Resources & Environmental Control) (or any successor agency) pursuant to its commitment letter which is attached hereto as **Exhibit A**.

Section 5. Details of the Bond. The President of Levy Court will determine the details of the Bond including the following: the date or dates of the Bond; provisions for either serial or term Bond; sinking fund or other reserve fund requirements; due dates of the interest thereon; the form of the Bond; the denominations and designations of the Bond; registration, conversion and transfer provisions; provisions for the receipt, deposit and investment of the proceeds of the Bond; provisions for the replacement of the lost, stolen, mutilated or destroyed Bond, and provisions for issuing uncertificated obligations and all procedures appropriate for the establishment of a system of the manual or facsimile signature of the President of Levy Court, shall contain an impression of the County Seal or a facsimile thereof and shall be attested by the manual signature of the Clerk of the Peace. A form of the Bond is attached hereto as **Exhibit B**.

Section 6. Debt Limit. It is hereby determined and certified, as of the effective date hereof, that the issuance of the Bond is within the legal debt limit of the County. Further Action. The President of the Levy Court, the County Administrator, the Finance Director and the Clerk of the Peace 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 Ordinance and the issuance and sale of the Bond and to provide for its security and to carry out the intent of this Ordinance, including the publication of notices and advertisements and the execution and delivery of customary closing certificates.

Section 7. Effective Date. This Ordinance shall become effective immediately upon its passage. The Clerk of the Peace is hereby directed to publish a notice of the adoption hereof in accordance with Section 4110(i)(2) of Title 9 of the Delaware Code, as amended.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 23-07, FORMERLY NUMBERED LC23-11 AND ADOPTED BY THE KENT COUNTY LEVY COURT ON MAY 23, 2023.

PRESIDENT, KENT COUNTY
LEVY COURT
THIS 23RD DAY OF MAY, 2023

ATTEST: _____
CLERK OF THE PEACE

SYNOPSIS

This Ordinance authorizes the issuance of up to \$722,856 of the County’s General Obligation Bond for the purpose of (i) financing or reimbursing the County for the construction of Whispering Pines MHP Septic Elimination – Phase II project. The project scope is to eliminate existing onsite septic systems tanks in the Whispering Pines Mobile Home Park by providing connections for up to 47 mobile home lots to the existing Phase I gravity sewer system for treatment at the Kent County Regional Resource Recovery Facility. The scope includes 2,158 linear feet of 8” gravity main, 8 manholes, a duplex grinder pump station, a force main and paving restoration of disturbed areas. The budget includes impact fees for the 38 mobile home connections (the “Project”); and (ii) paying the costs of issuance of the Bond.

EXHIBIT A

SRF Commitment Letter



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

OFFICE OF THE SECRETARY
ENTERPRISE BUSINESS PARK
97 COMMERCE WAY, SUITE 106
DOVER, DELAWARE 19904

ENVIRONMENTAL
FINANCE

PHONE: (302) 739-9941

FAX: (302) 739-2137

June 21, 2022

Ms. Diana Golt, P.E.
Public Works Director
Kent County Levy Court
555 Bay Rd.
Dover, DE 19901

RE: Delaware Water Pollution Control Revolving Fund Binding Commitment Offer for Kent County Levy Court – Whispering Pines MHP Septic Elimination Project-Phase II

Dear Ms. Golt:

On behalf of the Delaware Water Pollution Control Revolving Fund (“Fund”), the Delaware Department of Natural Resources and Environmental Control (“Department”) is pleased to advise you that a Loan (“Loan”) has been authorized from the Fund to Kent County Levy Court (“the County”) in the amount of **\$722,856** for a term of **twenty (20) years**. The Loan will be used for the construction of Whispering Pines MHP Septic Elimination - Phase II project. The project scope is to eliminate existing onsite septic systems tanks in the Whispering Pines Mobile Home Park by providing connections for up to 47 mobile home lots to the existing Phase I gravity sewer system for treatment at the Kent County Regional Resource Recovery Facility. The scope includes 2,158 linear feet of 8” gravity main, 8 manholes, a duplex grinder pump station, a force main and paving restoration of disturbed areas. The budget includes impact fees for 38 mobile home connections.

The loan interest rate shall be **2.0%** for a term of 20 years. The County will pay semi-annual interest only payments during project construction based on cumulative loan draws. After the Project has been completed, up to \$722,856 of the principal balance shall be forgiven. Should the project not be completed, the outstanding balance will be amortized over a term not to exceed 20 years.

It is understood that a General Obligation Bond of the County will secure the Loan. All legal costs, incurred by the Fund, associated with loan closing shall be borne by the County and will become a part of loan proceeds.

Ms. Diana Golt
June 21, 2022
WPCRF Binding Commitment Letter
Kent County – Whispering Pines Septic Elimination Project- Phase II
Page | 2

The Fund reserves the right to withdraw or alter the terms of this commitment if, between the date of the County's loan application and the date of the closing, the County incurs any debt or its financial condition changes in any way deemed material by the Fund at its sole discretion. Loan closing and the disbursement of funds shall remain subject to the satisfaction of any conditions established by the Fund.

The County shall comply in all respects with all applicable Fund requirements and reporting, federal laws, regulations, and other requirements related to or arising out of, or in connection with funding by the Fund. The County shall also comply in all respects with the Federal Single Audit Act, 2 CFR 200 Subpart F, as a sub-recipient of Federal funds. The Catalog of Federal Domestic Assistance (“CFDA”) number for the Fund is 66.458. Where noncompliance of such requirements is determined by the Fund or the Department, the issue shall be referred to the proper federal authority and/or agency for consultation and/or enforcement action.

If you have any questions concerning the foregoing, please contact this office at 302-739-9941. If you concur with the terms and conditions stated above, please acknowledge your acceptance by signing below and returning the original to this office no later than July 21, 2022.

If Loan closing shall not have occurred within 120 days of receipt of this letter, the Fund reserves the right to discontinue processing the County's application.

Sincerely,
FOR THE DELAWARE WATER POLLUTION CONTROL
REVOLVING FUND

Laura Robbins

Laura Robbins
Chief of Administration
Environmental Finance
DNREC- Office of the Secretary

The foregoing terms and conditions are hereby acknowledged and accepted this ____ day of _____, _____.

By: _____
Terry L. Pepper
President, Kent County Levy Court

(SEAL OF THE COUNTY)

cc: Reza Moqtaderi, DNREC EF

EXHIBIT B
Form of Bond

**REGISTERED
R-1**

\$722,856

UNITED STATES OF AMERICA

**STATE OF DELAWARE
KENT COUNTY, DELAWARE**

**GENERAL OBLIGATION BOND
(WHISPERING PINES MHP SEPTIC ELIMINATION PROJECT - PHASE II),
SERIES 2023-SRF**

Final Maturity Date: [_____, 20__]

REGISTERED OWNER: Delaware Water Pollution Control Revolving Fund (acting by and through the Delaware Department of Natural Resources and Environmental Control)

PRINCIPAL AMOUNT: Seven Hundred Twenty-Two Thousand Eight Hundred Fifty-Six Dollars (\$722,856)

Kent County, Delaware, a county and political subdivision of the State of Delaware (hereinafter referred to as the “Borrower”), for value received hereby acknowledges itself indebted and promises to pay to the DELAWARE WATER POLLUTION CONTROL REVOLVING FUND, or to any other registered owner hereof, the principal sum of SEVEN HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED FIFTY-SIX DOLLARS (\$722,856) or so much thereof as shall actually be advanced to the Borrower by the Delaware Water Pollution Control Revolving Fund, acting by and through Delaware Department of Natural Resources and Environmental Control (the “Department”) pursuant to the Financing Agreement dated [_____] , 2023 (the “Financing Agreement”) between the Borrower and the Department.

This Bond is being issued in order to finance or reimburse the Borrower for construction of Whispering Pines MHP Septic Elimination – Phase II project, as more fully described in Exhibit A to the Financing Agreement (the “Project”).

The Borrower shall pay to the Department, on the principal amount drawn down and outstanding hereunder from the date(s) drawn, interest at the rate of 1.00% per annum and an administrative fee at the rate of 1.00% per annum (collectively, interest and the administrative fee are referred to herein as “Fee”). Such Fee shall accrue starting on the date hereof (the “Closing”) through the Final Maturity Date or prepayment in full hereof. During construction of the Project, the Borrower shall pay Fee on the principal amount outstanding semiannually on each [_____] 1 and [_____] 1 (each, a “Payment Date”). The Borrower shall pay Fee hereunder initially on [_____] 1, 2023. The Borrower shall pay only Fee and no principal during the period commencing with the Closing through the Payment Date next succeeding the date on which the Project is actually completed (currently expected to be [_____] , 20__) as of the Closing).

The Borrower expects to complete the Project by [_____, 20__] (herein referred to as the “Amortization Start Date”). This projected date of completion of the Project is subject to an extension if such extension is mutually agreed upon by the Department and the Borrower.

After the Amortization Start Date, Fee and principal shall be payable on the outstanding principal amounts drawn hereunder semiannually, on each Payment Date, commencing on the Payment Date next succeeding the Amortization Start Date and continuing on each of the next 39 following Payment Dates, in an amount sufficient to amortize all principal drawn with substantially equal semiannual payments of principal and Fee over twenty (20) years. Once determined, Payment Dates shall remain the same throughout the term of this Bond.

The Amortization Start Date and the projected final maturity date are based on the expected Project completion date, as of the Closing, of [_____, 20__] and are subject to change should the actual completion date of the Project vary from the expected date of completion. Once the Borrower has confirmed the Project is completed and/or notified the Department that no additional funds will be drawn or requested for the Project, the Amortization Start Date will commence.

If by [_____, 20__], which is one year from the date of Closing, (i) the Borrower has not drawn down the principal amount of this Bond by more than ten percent (10%) of the Project costs, and (ii) the Department has not received a Notice to Proceed as required by the Financing Agreement, the Department may in its discretion assess a penalty of one percent (1%) of the total principal amount authorized by this Bond (the “Penalty”). Such Penalty may be drawn by the Department from the principal amount allocated to this Bond. It is within the Department’s complete discretion whether to impose the Penalty based upon its review of affirmative steps taken by the Borrower to complete the Project and the totality of the circumstances surrounding any such delay in making draws on the principal amount of this Bond.

Notwithstanding the foregoing, all unpaid principal and Fee shall be paid in full on [_____, 20__]. The Fee hereon shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. Both the principal of and Fee on this Bond are payable in lawful money of the United States of America. Principal of and Fee on this Bond shall be paid by check or draft mailed or remitted electronically on the payment date to the Registered Owner, as shown on the books and records of the Borrower.

This Bond is authorized and issued pursuant to the Laws of the State of Delaware, including Chapters 41 of Title 9, Delaware Code, as amended, (the “County Code”) and Ordinance No. [___] adopted by the Borrower on [_____], 2023.

At the option of the Borrower and upon providing prior written notice to the Registered Owner hereof, as shown on the books and records of the Borrower, this Bond may be prepaid or redeemed in whole or in part, without penalty, at any time, and any prepayment in part of this Bond shall be applied to all or a portion of the principal installments then outstanding as shall be specified by the Borrower. If all or a portion of this Bond is called for redemption, it or the portion so called will cease to bear Fee on the specified redemption date provided that funds for the

payment of the principal amount of the portion of this Bond so called for redemption and the accrued Fee thereon to the redemption date are on deposit at the place of payment on the redemption date.

It is hereby certified and recited that all conditions, acts, and things required by the Constitution, statutes or laws of the State of Delaware to exist, be performed or happen, precedent to or in the issuance of this Bond, do exist, have been performed and have happened, and that the amount of this Bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution, statutes or laws. This Bond is a valid and legally binding general obligation of the Borrower and, unless paid from other sources, the principal payable hereon will be paid from ad valorem taxes levied upon all real property subject to taxation by the Borrower. The full faith and credit of the Borrower are hereby pledged to the punctual payment of the principal of and Fee on this Bond according to its terms.

This Bond may be transferred by the Registered Owner hereof in person or by its attorney duly authorized in writing. The Borrower may deem and treat the Registered Owner as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and Fee due hereon and for all other purposes.

The provisions of this Bond shall be construed and enforced under the laws of the State of Delaware.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Borrower has caused this Bond to be signed by the President of Kent County Levy Court and attested by the Clerk of Peace, and the official corporate seal of the Borrower to be imprinted or impressed hereon, and this Bond to be dated [_____], 2023.

KENT COUNTY, DELAWARE

(SEAL)

President, Kent County Levy Court

Clerk of Peace