

**INTRODUCED BY:** Commissioner Jeffrey W. Hall  
**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 23-08**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$3,000,000 GENERAL OBLIGATION DEBT FOR KENT COUNTY FOR THE AIR BLOWER OPTIMIZATION AND PLANT-WIDE GENERATOR PHASES OF THE WASTEWATER TREATMENT FACILITY CAPACITY EXPANSION AND NUTRIENT REMOVAL PROJECT, AND CERTAIN OTHER WASTEWATER TREATMENT PLANT UPGRADES 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, the County has received a commitment from the United States of America (acting by and through the Department of Agriculture, Rural Development, Rural Utilities Service) (the “RUS”) for a loan of up to \$3,000,0000 for the Project (as defined herein).

WHEREAS, RUS issued a Letter of Conditions dated May 3, 2016 (the “Letter of Conditions”) which provides a RUS loan in an amount not to exceed \$3,000,000.

WHEREAS, the County authorized to meet the RUS Funding Application Letter of Conditions via Levy Court motions on May 24, 2016.

WHEREAS, acting pursuant to its statutory authority, pursuant to Title 9 Delaware Code Chapter 46 and the Resolution, the County desires to authorize the issuance of up to \$3,000,000 of its General Obligation Bond to finance certain wastewater treatment plant upgrades including: (i) air blower system optimization projects and (ii) plant-wide generator projects (the “Project”).

WHEREAS, pursuant to Title 9, Delaware Code, Section 4111(a) the County is authorized to issue bonds and notes, 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 herein.

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

Section 1. Amount and Purpose of the Bond. Acting pursuant to Title 9, Delaware Code, Section 4111, the County shall issue its negotiable obligations in the maximum aggregate principal amount not to exceed \$3,000,000 (the "Bond") to finance a portion of the cost of the design, construction and equipping of the Project.

The monies raised from the sale of the Bond (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 the County. Authorized purposes include the costs of designing, planning, constructing, acquiring and equipping the Project or any portion thereof; interest on the Bond and any interim financing during the construction period and for a period of up to one year after the end of the construction period; reasonable costs of issuance of the Bond 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. The proceeds of the Bond may be used for the Project.

Section 2. 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 they are issued pursuant to Title 9, Delaware Code, and Chapter 46, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. While the Bond is backed by the County's full faith and credit, it is expected that the debt service will be paid from revenues collected from users of the specific sewer system.

Section 3. 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 40 years from the expected date of the commencement of operation of the Project, and shall be subject to redemption as the President of Levy Court shall determine.

Section 4. Sale of the Bond. The Bond may be issued in one or more series and shall be sold in one or more private negotiated transactions upon such terms and conditions as the County Administrator shall determine shall be in the best interests of the County. Some portion or all of the Bond may be sold to the RUS (or its successor agency).

Section 5. Details of the Bond. The President of Levy Court will determine the details of the Bond including the following: the date 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 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 such Bond is attached hereto as **Exhibit A**.

Section 6. Authorization and Approval of Bond Documents. The President of Levy Court, the County Administrator or the Finance Director is authorized to enter into, on behalf of the County, all agreements as he or she shall determine shall be necessary or appropriate to carry out the intent of this Ordinance, including but not limited to, a bond purchase agreement with respect to the sale of the Bond, applications for and agreements with respect to bond insurance or other credit enhancement, amendments to any trust or financing agreements, agreements with The Depository Trust Company and agreements with depositories with respect to Bond proceeds and related funds.

Section 7. 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.

Section 8. Bond Anticipation Notes. In anticipation of the issuance of the Bond, the County may issue its bond anticipation notes upon such terms and conditions as shall be determined by the President of Levy Court or the County Administrator to be in the best interests of the County. If not paid from other funds the principal and interest on the bond anticipation notes due at maturity shall be paid from the proceeds of the Bond. The full faith and credit of the County is pledged to the payment of the principal and interest of any such bond anticipation notes.

Section 9. Covenants. The County covenants for the benefit of the holder of the Bond (a) that no use of the proceeds of the Bond or the earnings thereon will be made, and no other action will be taken, which would cause the Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended, (the “Code”) (b) that all action with respect to the Bond required to be taken to avoid characterization of the Bond as an “arbitrage bond” under Section 148 of the Code shall be taken (c) that the County will take all steps necessary and within its control to ensure that interest on the Bond is not included in gross income of the holder of the Bond for purposes of federal income taxation and (d) that the County will take no action to cause the Bond to become a “private activity bond” as that term is used in Section 141(a) of the Code.


Section 10. 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 their 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 10. 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(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. 23-08, FORMERLY NUMBERED LC23-12, ADOPTED BY THE KENT COUNTY LEVY COURT ON ~~MAY~~, 2023.

  
\_\_\_\_\_  
PRESIDENT, KENT COUNTY  
LEVY COURT  
THIS 23<sup>rd</sup> DAY OF MAY, 2023

ATTEST:   
\_\_\_\_\_  
CLERK OF THE PEACE

**SYNOPSIS**

This Ordinance authorizes the issuance of up to \$3,000,000 of the County's General Obligation Bond for the purpose of (i) financing or reimbursing the County for the air blower system optimization projects and plant-wide generator projects (the "Project"); and (ii) paying the costs of issuance of the Bond.



**EXHIBIT A**

**FORM OF BOND**

UNITED STATES OF AMERICA

STATE OF DELAWARE  
KENT COUNTY, DELAWARE

GENERAL OBLIGATION BOND  
(WASTEWATER TREATMENT PLANT PHASE TWO PROJECT)  
SERIES 20\_\_-RUS

| <u>Interest Rate</u> | <u>Final Maturity Date</u> | <u>Dated Date</u> |
|----------------------|----------------------------|-------------------|
| _____ %              | _____, _____               | _____, _____      |

Registered Owner:                   The United States of America (by and through Rural Utilities Service, United States Department of Agriculture)

Principal Amount:

KENT COUNTY, DELAWARE, a county and political subdivision of the State of Delaware with home rule powers (hereinafter referred to as "County"), for value received hereby acknowledges itself indebted and promises to pay to THE UNITED STATES OF AMERICA, or to any other registered owner hereof, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). The County shall pay interest on the unpaid principal amounts advanced and unpaid on \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_, at the interest rate set forth above.

Commencing on \_\_\_\_\_, \_\_\_\_\_, principal and interest shall be payable quarterly on each \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ until the Final Maturity Date set forth above, in 152 consecutive quarterly installments in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Interest hereon shall be calculated on the basis of a 365-day year and be paid for the actual number of days elapsed. Both the principal of and interest on this Bond are payable in lawful money of the United States of America. Principal of and interest on this Bond shall be paid electronically through the Rural Utilities Service Preauthorized Debt payment process while the registered owner of the Bond is the United States of America. If the registered owner of the Bond is not the United States of America payment shall be made by check or draft mailed to the registered owner of the Bond as shown on the bond register maintained by the County.

This Bond has been duly authorized and is issued pursuant to the terms of the Constitution and laws of the State of Delaware and the County, including Chapter 46 of Title 9 of the Delaware Code, as amended, and pursuant to Ordinance LC \_\_\_\_\_ adopted on \_\_\_\_\_, 20\_\_, Resolution No. \_\_\_\_ adopted on \_\_\_\_\_, 20\_\_ and a Resolution of the President of Levy Court of even date herewith (collectively the "Enabling Acts") to finance or reimburse the County for a

portion of the costs of certain wastewater treatment plant upgrades including: (i) air blower system optimization projects and (ii) plant-wide generator projects (the "Project").

This Bond may be prepaid or redeemed in whole or in part at any time or from time to time without penalty and any prepayment in part of this Bond shall be applied to all or a portion of the installments then outstanding as shall be specified by the County.

It is hereby certified and recited that all conditions, acts, and things required by the Constitution or statutes of the State of Delaware and the County to exist, be performed or happen, precedent to or in the issuance of this Bond, exist, have been performed and have happened and that the amount of this Bond, together with all other indebtedness of the County, is within every debt and other limit prescribed by said Constitution or statutes. This Bond is a valid and legally binding obligation of the County and, unless paid from other sources, the principal and interest payable hereon will be paid from ad valorem taxes levied upon all real property subject to taxation by the County without limitation as to rate or amount except as provided in Title 9, Delaware Code, Section 8002. The full faith and credit of the County are hereby pledged to the punctual payment of the principal of and interest on this Bond according to its terms.

Any transfer of this Bond must be registered, as provided in the Enabling Acts, upon the Bond Register kept for that purpose at the office of the County by the registered owner hereof in person, or by his attorney duly authorized in writing. Upon surrender of this Bond together with a written instrument of transfer satisfactory to the County executed by the registered owner, or his attorney duly authorized in writing, a new registered Bond of the same series and security and in the same principal amount, shall be issued to the transferee in exchange herefor as provided in the Enabling Acts free of charge except for any applicable transfer tax or other governmental charge. The County may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon and for all other purposes, as provided in the Enabling Acts.

IN WITNESS WHEREOF, the County has caused this Bond to be signed by the President of Levy Court, and the official corporate seal of the County to be imprinted or impressed hereon, and this Bond to be dated \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Terry L. Pepper  
President of Levy Court  
Kent County, Delaware

ATTEST:

\_\_\_\_\_  
Brenda A. Wooten  
Clerk of the Peace  
Kent County, Delaware



I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE \_\_-\_\_ ADOPTED BY THE KENT COUNTY LEVY COURT ON THE \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
PRESIDENT, KENT COUNTY LEVY COURT  
THIS \_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CLERK OF THE PEACE