

RESOLUTION NO. RS-06-042

A RESOLUTION OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY (THE "BORROWER"), APPROVING THE FORM AND AUTHORIZING THE EXECUTION, ISSUANCE, SALE AND DELIVERY OF A GENERAL OBLIGATION INSTALLMENT BOND OF THE BORROWER IN A PRINCIPAL AMOUNT NOT TO EXCEED ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) PURSUANT TO THE AUTHORITY OF TITLE 6, WATER, SEWER, AND DRAINAGE SYSTEMS, OF THE CODE OF PUBLIC LOCAL LAWS OF WASHINGTON COUNTY (1991 EDITION, AS AMENDED), THE BONDS TO BE DESIGNATED "WASHINGTON COUNTY, MARYLAND, WATER SYSTEM BOND OF 2006 (PEN MAR PROJECT)," THE NET PROCEEDS OF THE SALE THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING AND DEVELOPING A WATER DISTRIBUTION SYSTEM, INCLUDING A WATER STORAGE TOWER AND APPURTENANCES, TO SERVE THE PEN MAR AREA OF WASHINGTON COUNTY, TOGETHER WITH THE ACQUISITION OF ALL NECESSARY EQUIPMENT AND PROPERTY RIGHTS, AND ANY RELATED ARCHITECTURAL, FINANCIAL, LEGAL, PLANNING AND ENGINEERING EXPENSES; PRESCRIBING THE FORM AND TENOR OF THE BOND AND THE TERMS AND CONDITIONS FOR THE ISSUANCE AND SALE THEREOF AT PRIVATE SALE TO THE UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF AGRICULTURE; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES TO PROVIDE FOR PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND WHEN DUE; AND GENERALLY RELATING TO THE ISSUANCE, SALE AND DELIVERY OF THE BOND.

BE IT RESOLVED BY COUNTY COMMISSIONERS OF WASHINGTON COUNTY:

Section 1. Pursuant to the authority of Title 6, Water, Sewer and Drainage Systems, of the Code of Public Local Laws of Washington County (1991 Edition, as amended) (the "Enabling Act"), County Commissioners of Washington County, a body politic and corporate of the State of Maryland (the "Borrower"), hereby determines to borrow money and incur indebtedness for the public purpose of financing a portion of the cost of acquiring, constructing and developing a water distribution system, including a water storage tower and appurtenances, to serve the Pen Mar area of Washington County, together with the acquisition of all necessary equipment and property rights, and any related architectural, financial, legal,

planning and engineering expenses (the "Project"). It is hereby estimated that the total cost of the Project not otherwise covered by grants or loans made by the State of Maryland or by the United States of America, other than loans made by the United States Department of Agriculture ("USDA"), will not be less than One Hundred Twenty-Five Thousand Dollars (\$125,000).

Section 2. To evidence the borrowing and indebtedness authorized in Section 1 of this Resolution, the Borrower, acting pursuant to the authority of the Enabling Act, hereby determines to issue and sell, upon its full faith and credit, a general obligation installment bond in the maximum aggregate principal amount of One Hundred Twenty-Five Thousand Dollars (\$125,000), to be known as "Washington County, Maryland Water System Bond of 2006 (Pen Mar Project)" (the "Bond"). The Bond shall be dated the date of delivery and shall be issued in the form of a single, fully registered installment bond, without coupons attached, payable to "United States of America, United States Department of Agriculture." The Bond shall bear interest on the unpaid principal balance at the rate of four and three hundred seventy-five thousandths percent (4.375%) per annum. The principal of and interest on the Bond shall be paid in equal quarterly installments of One Thousand Six Hundred Fifty-Nine Dollars (\$1,659) each. The first such installment of principal and interest shall be due and payable on _____ **[exactly three months after date of loan closing]**, and subsequent installments of principal and interest shall be payable in quarterly installments, except that prepayments may be made as provided in Section 3 of this Resolution.

Section 3. The Borrower shall have the right to prepay scheduled installments, or any portion thereof, at any time at par without premium or penalty. Prepayments (and any refunds or extra payments, as designated in the regulations of USDA according to the source of funds involved) shall, after payment of interest then due on the Bond, be applied to the installments of principal last to become due under the Bond and shall not affect the obligation of the Borrower to pay the remaining principal of and interest on the Bond as and when due. Notice of prepayment shall be given at least thirty (30) days prior to the prepayment date by mailing to the registered owner a notice fixing the prepayment date and the amount to be prepaid.

Section 4. The Bond shall be executed in the name of the Borrower and on its behalf by the President or Vice President of the Board of County Commissioners of Washington County (the "Board"). The corporate seal of the Borrower shall be affixed to the Bond, attested by the signature of the County Clerk. The principal of and interest on the Bond shall be paid by the Borrower by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mails on or before the payment date) to the registered owner at its address as it appears on the books kept for that purpose at the office of the Borrower, if such address is within the United States of America; otherwise, the

principal of and interest on the Bond shall be payable at the office of the Borrower in Hagerstown, Maryland. In the event any official whose signature appears on the Bond shall have become such official after the date of this Resolution, the Bond shall, nevertheless, be valid and legally binding obligations of the Borrower in accordance with its terms.

Section 5. The Bond shall be transferable only upon the books kept for that purpose at the office of the Borrower by the registered owner in person or by its duly authorized attorney, upon surrender thereof, together with a written instrument of transfer satisfactory to the County Clerk, duly executed by such registered owner or duly authorized attorney. Upon such transfer there shall be issued in the name of the transferee a new registered bond or bonds, in such denominations as the Borrower may by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered and with the same maturities and interest rate. If more than one bond is issued upon any such transfer, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on such payment date multiplied by a fraction, the numerator of which shall be the unpaid principal amount of such bond, and the denominator of which shall be the aggregate principal amount of all bonds then outstanding and unpaid. No bond shall be transferred upon the books kept by the Borrower except upon payment of any taxes on and any shipping or insurance expenses relating to such transfer; provided, however, that if the United States of America is the owner of the bond or bonds sought to be transferred, the costs thereof shall be borne by the Borrower.

Section 6. Except as provided hereinafter or in a resolution or resolutions of the Borrower adopted prior to the issuance of the Bond, the Bond shall be issued in substantially the form attached hereto. Appropriate variations and insertions to provide dates, numbers and amounts, and modifications not altering the substance of the Bond may be made by the President of the Board. All of the covenants contained in the attached form are hereby adopted by the Borrower as and for the form of obligation to be incurred by the Borrower, and the covenants and conditions contained therein are hereby made binding upon the Borrower, including the promise to pay therein contained.

Section 7. The Bond shall be sold at private sale for cash at par to USDA, public advertisement and sale of the Bond not being required by the terms of the Enabling Act and the best interests of the Borrower and the property owners and residents of the Pen Mar area being hereby declared to be served by such private sale. The President of the Board is expressly authorized and empowered to take any and all action necessary to complete and close the award, sale and delivery of the Bond to the USDA, including, without limitation, making such changes or modifications in the form adopted herein as may be necessary or appropriate to comply with USDA regulations, practices and policies applicable from time to time.

Section 8. The Director of Finance of the Borrower is hereby designated to receive payment on behalf of the Borrower of the proceeds of the sale of the Bond. Such proceeds shall be deposited in the proper accounts of the Borrower and shall be used and applied by the Borrower exclusively and solely for the public purposes described in Section 1 of this Resolution. If the proceeds received from the sale of the Bond exceed the amount needed for such public purposes, the unexpended excess shall be applied in accordance with USDA regulations, practices and policies applicable from time to time.

Section 9. The maturing principal of and interest on the Bond when due shall be payable in the first instance from revenues derived by the Borrower from its water service charges which revenues are deposited into the Borrower's Water Fund; however, such revenues are not specifically pledged to the payment of principal of or the interest on the Bond. In the event that funds available to the Borrower from all sources are insufficient to pay the principal of or the interest on the Bond in any fiscal year in which the Bond is outstanding, the Borrower shall levy in such fiscal year upon all legally assessable property within the corporate limits of Washington County ad valorem taxes in rate and amount sufficient to provide for the prompt payment of such principal and interest on the Bond in such fiscal year, and, if the proceeds from the collection of taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency. The full faith and credit and unlimited taxing power of the Borrower are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as and when it becomes due and payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bond. The Borrower hereby covenants and agrees with the registered owner of the Bond to levy and collect the taxes hereinabove described and to take any action that may be appropriate from time to time during the period that the Bond remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

Section 10. The President or Vice President of the Board and the Director of Finance of the Borrower shall be the certifying officials for the Borrower responsible for the execution and delivery on the date of the issuance of the Bond of a tax and arbitrage certificate of the Borrower that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder and counsel rendering an opinion on the validity of the Bond on the date of issuance of the Bond ("Bond Counsel"). Such certifying officials are hereby authorized and directed to execute and deliver the tax and arbitrage certificate to Bond Counsel. The tax and arbitrage certificate shall set out the reasonable expectations of the Borrower as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond or of any moneys, securities or other obligations to the credit of any account of the Borrower which may be deemed to be bond proceeds under Section 148 of the Code or the arbitrage regulations (collectively, the "Bond Proceeds"). The Borrower covenants with the owner of the Bond that the facts, estimates and circumstances set forth in the tax and arbitrage certificate will be based on the Borrower's reasonable expectations on the

date of the issuance of the Bond and will be, to the best of the certifying official's knowledge, true, correct and complete as of that date.

Section 11. The Borrower covenants with the holder of the Bond that it will not use, or permit the use of any of, the Bond Proceeds or any other funds of the Borrower, directly or indirectly, to acquire any securities or obligations, and will not take or permit to be taken or fail to take any other action or actions which would cause the Bond to be an "arbitrage bond" within the meaning of said Section 148 and said regulations or that would otherwise cause the interest on the Bond to be includable in gross income of the holder of the Bond for federal income tax purposes.

The Borrower further covenants that it will comply with said Section 148 and said regulations and such other requirements of the Code which are applicable to the Bond on the date of issuance of the Bond and which may subsequently lawfully be made applicable to the Bond.

The Borrower will hold and shall invest Bond Proceeds within its control (if such proceeds are invested) in accordance with the expectations of the Borrower set forth in said certificate.

The Borrower shall make timely payment of any rebate amount or payment in lieu thereof (or installment thereof) required to be paid to the United States of America in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Bond and shall include with any such payment such other documents, certificates or statements as shall be required to be included therewith under then applicable law and regulations.

The Borrower further covenants that it shall make such use of the proceeds of the Bond, regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain the excludability from gross income for federal income tax purposes of interest on the Bond. All officers, employees and agents of the Borrower are hereby authorized and directed to take such actions and to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bond as may be necessary or appropriate from time to time to comply with, or to evidence the Borrower's compliance with, the covenants set forth in this Section 11.

The President or the Vice President of the Board or the Director of Finance of the Borrower may execute a certificate or certificates supplementing or amending said certificate, and actions taken by the Borrower subsequent to the execution of such certificate shall be in accordance with said certificate as amended or supplemented; provided, however, that the Borrower shall execute any such certificate only upon receipt by it of an opinion of Bond Counsel addressed to the Borrower to the effect that actions taken by the Borrower in accordance with the amending or supplementing certificate will not adversely affect the exclusion from gross income for federal income taxation purposes of interest on the Bond.

The Borrower hereby covenants with the owner from time to time of the Bond that it shall not take or cause to be taken any action or fail to take any action, the taking of which or the omission of which, under the law existing on the date of issuance of the Bond, or which may subsequently lawfully be made applicable to the Bond, would cause the interest on the Bond to become subject to federal income taxation.

Section 12. It is hereby determined that: (i) the total unpaid bonded indebtedness of the Borrower, with respect to water, sewerage and drainage systems in Washington County, less the amount of any sinking funds or reserves for payment of any bonds previously issued at the date of adoption of this Resolution is Thirty-Four Million Twelve Thousand Eight Hundred Ten Dollars (\$34,012,810); (ii) the total assessed valuation of all property within Washington County subject to unlimited Borrower taxation as of the end of the fiscal year of the Borrower most recently concluded was Eight Billion Eight Hundred Fifty-Five Million Seven Hundred Thirty-Seven Thousand Dollars (\$8,855,737,000); and (iii) the total amount of bonded indebtedness set out in clause (i) of this Section 12 and the maximum principal amount of the Bond will not exceed 10% of the total assessed valuation set out in clause (ii) of this Section 12. The Borrower covenants that the issuance, sale, execution and delivery of the Bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by the Constitution or statutes of the State of Maryland or the Enabling Act.

Section 13. The President and Vice President of the Board, the Director of Finance of the Borrower, the County Clerk, the Director of the Department of Water Quality and such other officers, officials and employees of the Borrower as the President or Vice President shall designate, are authorized hereby to do any and all things, execute all instruments, documents and certificates and otherwise take all action necessary, proper or expedient in connection with the issuance, sale and delivery of the Bond. The President and Vice President of the Board, the Director of Finance of the Borrower, the County Clerk, the Director of the Department of Water Quality and all other officers, officials and employees of the Borrower are authorized and directed hereby to do all acts and things required of them by the provisions hereof and the Bond for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements of this Resolution and the Bond.

Section 14. This Resolution shall be effective on the date of its adoption.

ADOPTED this 28th day of November, 2006.

(SEAL)

ATTEST:

Joni L. Bittner

Joni L. Bittner
County Clerk

COUNTY COMMISSIONERS OF
WASHINGTON COUNTY

By: Gregory J. Snbok

Gregory J. Snbok, President
Board of County Commissioners of
Washington County