

**CITY OF PIKEVILLE
BOARD OF COMMISSIONERS
SPECIAL MEETING MINUTES
November 16, 2009 AT 6:00 P.M.**

The Board of Commissioners for the City of Pikeville met in a special called session on Thursday, November 16, 2009. The meeting was held in the City Hall Conference Meeting Room located at 118 College Street, Pikeville, Kentucky.

1. There being a quorum present, Mayor Frank Justice called the meeting to order at: 5:00 p.m. Commission Members present at roll call were a follows:

COMMISSIONER: **GENE DAVIS
BARRY CHANEY
DALLAS LAYNE
JIMMY CARTER**

MAYOR: **FRANKLIN D. JUSTICE, II**

2. The minutes for the previous regular meeting held on November 9, 2009 were in each Commission Member's agenda package. There being no additions or corrections, Commissioner Chaney made the motion to approve the minutes as prepared. Commissioner Layne seconded the motion. Mayor Frank Justice called for discussion, there being none the motion carried unanimously. 5-0.

3. City Manager Donovan Blackburn proposed a one-time pay increase in the amount of \$300.00 for all City employees for the calendar year 2009. Commissioner Layne made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for comments there being none the motion passed unanimously. 5-0.

4. City Attorney Rusty Davis submitted a request to adopt resolution 2009-021 authorizing to borrow interim financing in the amount of \$1,500,000.00 for the US 23 water line replacement project from Community Trust Bank in Pikeville and to authorize the Mayor to sign the resolution. The City issuance of its water and sewer system revenue bonds, Series 2010: "City of Pikeville Series 2010 Construction Fund" concurrently created. Commissioner Chaney made the motion to adopt the Resolution. Commissioner Carter seconded the motion. Mayor called for comments, there being none the resolution was adopted unanimously. 5-0.

RESOLUTION NO. R-2009-021

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF PIKEVILLE, KENTUCKY, AUTHORIZING THE BORROWING OF MONEY FOR INTERIM FINANCING IN ANTICIPATION OF THE CITY'S ISSUANCE OF ITS WATER AND SEWER SYSTEM REVENUE BONDS, SERIES 2010;

November 16, 2009 Special Meeting

ACKNOWLEDGING THE CREATION OF A CONSTRUCTION FUND FOR THE PROJECT TO BE FINANCED THROUGH THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND ANTICIPATION NOTE IN EVIDENCE OF THE INTERIM BORROWING; AND PLEDGING REPAYMENT OF THE INTERIM BORROWING AND INTEREST THEREON FROM THE PROCEEDS OF SUCH BONDS.

WHEREAS, the City of Pikeville, Kentucky (the "City"), expects to enter into a loan and/or grant agreement with the United States Department of Agriculture, Rural Development ("USDA"), or with another qualified long-term lending source (the "Provider"), contemplating the issuance by the City of its Water and Sewer System Revenue Bonds, Series 2010 (the "Bonds"), the proceeds of which will be applied to the acquisition, construction and installation of major improvements and additions (the "Project") to the City's combined water and sanitary sewer system (the "System"), including the retirement of interim financing incident thereto; and

WHEREAS, the City may borrow money on an interim basis to provide for the payment of necessary costs and expenses of the Project, with the provision that such borrowed money and interest thereon shall be repaid from the proceeds of the Bonds (whether the Bonds are purchased by USDA or by the Provider); and

WHEREAS, in order that the acquisition, construction and installation of the Project may be undertaken, it is necessary that the City authorize and make provision for the borrowing of interim construction funds and for the repayment thereof in the above-described manner; and

WHEREAS, the City may make arrangements with an interim lender to borrow as needed from time to time up to \$1,500,000 for construction purposes pending the delivery of the Bonds, upon condition that such loans with interest thereon at a rate not to exceed the rate hereinafter specified be repaid to such interim lender when the Bonds are issued and the proceeds thereof are received by the City; and the City has solicited proposals from at least three responsible interim lenders with respect to such interim borrowing;

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PIKEVILLE, KENTUCKY, AS FOLLOWS:

Section 1. It is acknowledged that for the purposes described in the preamble of this Resolution (which is adopted as a part hereof), a special and separate fund and bank account of the City, designated as the "City of Pikeville Series 2010 Construction Fund" (the "Construction Fund") is being concurrently created. There shall be deposited in the Construction Fund by the Finance Director or other officer of the City from time to time all moneys borrowed for the interim financing of the Project as herein provided. A true and accurate separate accounting shall be made of all deposits in and disbursements from the Construction Fund, and at no time shall there be any commingling with other moneys of the City.

Section 2. There is hereby authorized the borrowing of up to the aggregate sum of \$1,500,000 from Community Trust Bank, Inc. (the "Lender"). The Mayor is hereby authorized to execute in the name and on behalf of the City a bond anticipation note substantially in the form attached hereto as Appendix A and made a part hereof (the "Note"), together with any necessary vouchers or requisitions requesting advances of cash funds by the Lender to the City. The rate of interest applicable to the Note shall be no greater than ___% per annum from the date of each advance of proceeds of the Note as set out in Appendix A. The Note shall mature no later than one year from date thereof.

Section 3. The City hereby covenants and agrees with the Lender that before the expiration of one year it will authorize, sell and issue the Bonds and will apply the proceeds thereof, to whatever extent may be necessary, in payment of the principal amount of the Note together with interest thereon to the date of such payment, and the proceeds of the Bonds are hereby pledged therefore and the same shall constitute a first and prior charge against such proceeds.

Section 4. Upon the occasion of each disbursement from the Construction Fund, it is agreed that there shall be filed with the City and the Lender, if requested, one or more requisitions, certificates or other written instruments in appropriate form wherein it is affirmed by the consulting engineers for the City, that to the extent the amount requested to be advanced represents payment to construction contractors, or to the consulting engineers, the same represents sums duly earned by and payable to such contractors or the consulting engineers, in accordance with a contract duly authorized and executed on behalf of the City, each such written instrument to bear an approving countersignature of the Mayor, City Manager, Finance Director or other authorized officer of the City. To the extent that the amount of any requested advance shall be for items not relating to construction contracts or compensation of the consulting engineers, it shall be certified by the Mayor, City Manager, Finance Director or other authorized officer

of the City that the advance is for expenditures which have been duly authorized by the City and which are expenditures eligible for payment by the City from proceeds of the Note and the Bonds. Checks drawn upon the Construction Fund shall be signed by the Mayor, Finance Director, City Manager and/or other authorized officer of the City, provided the City Clerk may sign for one of such officers if such officer is not available.

Section 5. Moneys from time to time on deposit in the Construction Fund in excess of the amount secured by the Federal Deposit Insurance Corporation, if any, shall be secured by a valid pledge to the City of direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, having at all times a market value (exclusive of accrued interest) at least equal to the balance maintained on deposit therein. If at any time there should be on deposit in the Construction Fund moneys in excess of the estimated disbursements on account of the Project for the next ten (10) days, the City reserves the right to direct that the Lender invest such excess funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States Government, which shall mature not later than six (6) months after the date of each investment and which shall be subject to redemption at any time by the holder thereof. Earnings received from any such investments shall be deposited by the City in the Construction Fund. Any moneys remaining in the Construction Fund after all costs of the Project have been paid and all loans and advances reimbursed shall be promptly used to the extent possible for the redemption of Bonds of the issue referred to herein; and any residue shall be deposited in the account hereafter to be designated in the Bond-authorizing Ordinance for the payment of the principal of and interest on the Bonds.

Section 6. The City hereby acknowledges and declares that the Note issued hereunder will not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation and will be payable solely from and secured by (i) the undisbursed proceeds of the Note, (ii) the proceeds derived from the issuance of the Bonds, and/or (iii) a pledge of the income and revenues to be derived from the operation of the System, but subject in all respects to the prior and superior pledges securing the outstanding water and sewer revenue bonds and other obligations of the City payable from such income and revenues. The Note is authorized to be executed and delivered by the Board of Commissioners under authority of the laws of the Commonwealth of Kentucky, with particular reference to Sections 58.150 and 56.513 of the Kentucky Revised Statutes.

Section 7. Counsel and Bond Counsel for the City have been and are hereby authorized to take such actions as may be appropriate or necessary in order to proceed with the Project and the financing thereof.

Section 8. Upon issuance of the Bonds by the City, the provisions of the Bond-authorizing Ordinance relating to the Construction Fund, disbursements therefrom and investment of moneys therein shall prevail over the provisions of this Resolution to the extent there may be any conflict or difference in such respective provisions.

Section 9. The City covenants that the Bonds will be issued expeditiously and the expenditure of the proceeds of the Note will be made immediately upon receipt of such proceeds. The City further certifies and covenants with the holder of the Note that so long as the Note remains outstanding, the proceeds of the Note will not be invested or used in a manner which will cause the Note to be an "arbitrage bond" within the meaning of Sections 103(b)(2) and 148 of the U. S. Internal Revenue Code of 1986, as amended (the "Code"), and any lawful regulations promulgated or proposed thereunder, as the same presently exist, or may from time to time hereafter be amended, supplemented or revised. The Mayor, Finance Director and/or other authorized officers of the City are authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for evidencing compliance with federal "arbitrage bond" regulations, and any representations and certifications contained in such papers, documents, certificates and other instruments so executed shall be deemed to constitute representations and certifications of the City.

For the benefit of the holder of the Note, the City further represents, warrants, agrees, covenants and certifies as follows:

(A) Within the meaning of Section 141 of the Code, (i) less than 10% of the proceeds of the Note, if any, will be applied for any private business use, and the payment of principal of or interest on less than 10% of the amount of the Note, if any, will be secured directly or indirectly by any interest in property used for a private business use, or payments in respect of such property, or will be derived from payments in respect of such property; (ii) at least 90% of the proceeds of the Note will be applied for a governmental use of the City; (iii) any such private business use will be related to such governmental use of the City and will not be unrelated or disproportionate; and (iv) none of the proceeds of the Note will be used, directly or indirectly, to make or finance loans to private persons.

(B) Within the meaning of Section 148(f)(4)(B) of the Code, it is reasonably expected at least 75% of the net proceeds (including investment proceeds) of the Note will be used for construction expenditures with respect to property which is owned by a governmental unit, at least 10% of such proceeds will be spent for the governmental purposes of the issue within six months from the date the Note is first issued, at least 45% of such proceeds will be

spent for such purposes within one year from such date, at least 75% of such proceeds will be spent for such purposes within 18 months from such date, and at least 100% of such proceeds will be spent within two years from such date. If for any reason the arbitrage rebate requirements of Section 148(f) of the Code should be deemed to apply to the Note, the City will take all action necessary to comply therewith.

(C) The Note is not federally guaranteed within the meaning of Section 149(b) of the Code.

(D) Within the meaning of Section 265(b) of the Code, the Note is a “qualified tax-exempt obligation” and is hereby so designated by the City for purposes of Section 265(b)(3) of the Code, and in this connection the City states and certifies that the reasonably anticipated amount of qualified tax-exempt obligations (other than private activity bonds) which will be issued by it and all of its subordinate entities during the year 2009[2010] does not exceed \$30,000,000.

(E) This Resolution is intended to and does constitute, in part, a declaration of official intent under Income Tax Regulations Section 1.103-18.

The City shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the City on the Note shall, for the purposes of federal income taxation, be excludable from gross income.

Section 10. This Resolution shall be in full force and effect from and after its adoption and approval, as provided by law. The Secretary is authorized to deliver to the Lender one or more certified copies hereof, and the same shall constitute official evidence of all matters set forth herein.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PIKEVILLE, KENTUCKY, at a meeting held on the ___ day of _____, 2009.

Mayor

Attest:

City Clerk

Certification

I, the undersigned, do hereby certify that the foregoing is a true, complete and correct copy of a Resolution adopted by the Board of Commissioners of the City of Pikeville, Kentucky, at a properly convened meeting of the Board of Commissioners held on the ___ day of _____, 2009, as shown by the official records of the City in my custody and under my control.

WITNESS my hand this ___ day of _____, 2009.

City Clerk

Appendix A

No. R-1

UNITED STATES OF AMERICA
COMMONWEALTH OF KENTUCKY
CITY OF PIKEVILLE, KENTUCKY
WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE
SERIES 2009[2010]

KNOW ALL MEN BY THESE PRESENTS: That the City of Pikeville, Kentucky, (the “City”), for value received, hereby promises to pay to Community Trust Bank, Inc. (the “Holder”), or its assigns, solely and only from the limited sources hereinafter described and not otherwise, the principal amount of \$_____, or the outstanding principal amount shown on Schedule A attached hereto, whichever is less, on or before _____, 2010, and to pay interest from the same sources on such principal amount from time to time outstanding, at the interest rate of ___% per annum from the date of each advance of proceeds of this Note in accordance with the Resolution of the Board of

Commissioners of the City adopted on December 14, 2009, authorizing this Note (the "Resolution"), on or before _____, 2010, and the date of maturity of this Note.

Principal of and interest on this Note shall be payable to the Holder at its main office in Pikeville, Kentucky. Interest on this Note shall be calculated on the basis of the actual number of days elapsed over a 360-day year.

The Holder shall endorse on Schedule A attached to this Note from time to time the amount of each advance of proceeds of this Note to the City and the outstanding principal amount of this Note, and each such endorsement shall be conclusive evidence of such amounts in the absence of manifest error; provided, however, that the City's obligations shall not be affected by any failure to endorse Schedule A to this Note correctly or at all.

This Note represents a duly authorized note issue of the City designated "City of Pikeville, Kentucky, Water and Sewer System Revenue Bond Anticipation Note, Series 2009[2010]" (the "Note"), limited in the principal amount of \$ _____, authorized and issued by the City in anticipation of the issuance of the City's Water and Sewer System Revenue Bonds, Series 2010 (the "Bonds"), pursuant to the Resolution, for the purpose of providing interim financing of the costs of certain water and sanitary sewer service facilities which will constitute a part of the City-owned and operated water and sewer system (the "System"), and this Note has been issued under and in full compliance with the Constitution and statutes of the Commonwealth of Kentucky, including among others Sections 58.150 and 56.513 of the Kentucky Revised Statutes.

Reference is made to the Resolution for provisions with respect to the nature and extent of the security, rights, duties and obligations of the Holder and the City and the terms upon which this Note is issued.

The City pledges as the sources of payment of the principal of and interest on the Note (a) the undisbursed proceeds of the Note, (b) the proceeds of the Bonds, when sold and issued, and (c) the income and revenues of the System, but subject in all respects to the prior and superior pledge securing the City's outstanding water and sewer revenue bonds and other obligations payable from such income and revenues.

The City covenants with the Holder that prior to the maturity date of this Note, the City will take all proper and necessary action in accordance with law to authorize, sell and issue the Bonds in an amount sufficient to provide for the payment when due of the principal of and interest on, and the retirement of, this Note, and the Note shall constitute a first charge upon said proceeds of the Bonds.

The City further covenants that the System will be continuously operated as a revenue-producing undertaking and that it will fix and charge such rates for the services and facilities of the System so that the revenues therefrom will be sufficient to cause and permit the City to meet applicable conditions and requirements for the timely issuance of the Bonds.

This Note is a special and limited obligation of the City and does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitations or provisions, and the City shall not be obligated to pay this Note or the interest hereon except from the sources herein specified or from the proceeds of renewal notes, if any.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance and delivery of this Note do exist, have happened and have been performed according to law; and that proper provision has been made and shall be made for the payment of the principal hereof and interest hereon as hereinabove set out.

This Note is exempt from *ad valorem* taxation by the Commonwealth of Kentucky and by its political subdivisions.

IN WITNESS WHEREOF, the City of Pikeville, Kentucky, acting by and through its Board of Commissioners, has caused this Note to be executed with the manual signature of the Mayor and attested by the manual signature of the City Clerk, in each case as a duly authorized officer of the City, all as of the date of this Note, which is _____, 2009[2010].

5. City Manager requested approval for an interim loan from Community Trust Bank in the amount of \$1,500,000.00 for the US 23 water line replacement project

and to authorize Mayor Justice to sign and execute all required paperwork for said loan. Commissioner Layne made the motion to approve loan. Commissioner Chaney seconded the motion. Mayor Justice called for comments, there being none the motion was passed unanimously. 5-0.

6. A list of City Bills totaling \$80,607.12 was presented to the Commission for approval of payment. Commissioner Davis made the motion to approve. Commissioner Carter seconded the motion. Mayor Frank Justice called for discussion, there being none the motion carried unanimously. 5-0.

7. Consider discussion and request to appoint new candidate to replace Ben Cassidy's position on the Pikeville Housing Authority Board. Mr. Cassidy's term expired on 9-16-09. The appointment is for a 4 year term. Mr. Layne recommended Clinton Daniels contingent upon Mr. Daniels accepting the appointment. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0.

8. Consider a request for the City of Pikeville to submit a grant application for up to the amount of \$125,000.00 to the Energy Efficiency and Conservation and Block Grant Program for the purpose of propane vehicle conversions and to authorize Mayor Justice to sign any and all necessary paperwork to submit and or receive award of said grant. The grant requires a 5% administration fee by Big Sandy Area Development District if grant is awarded. Commissioner Chaney made the motion to approve. Commissioner Layne seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0.

9. City Manager Donovan Blackburn submitted a pay request #9 for the Thompson Road Widening Project in the amount of \$82,136.67 to Mountain Enterprises and to authorize the mayor to sign pay request. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for comments, there being none the motion passed unanimously. 5-0.

10. Consider request for closed session for discussion of pending legal action involving Sprinturf for Hambley Athletic Complex. Commissioner Davis made the motion to adjourn. Commissioner Chaney seconded the motion to adjourn. Mayor Justice called for discussion, there being none the motion passed unanimously to adjourn for closed session. 5-0

11. Commissioner Carter made the motion to re convene. Commissioner Chaney seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0. Mayor called the session back into order.

12. There being no further business to come before the Commission, Commissioner Carter has made the motion to adjourn the meeting. Commissioner Layne seconded

the motion. Mayor Justice called for discussion, there being none the meeting was adjourned. 5-0

The next scheduled Regular Meeting of the City of Pikeville Board of Commissioners is December 14, 2009 at 6:00 p.m.

APPROVED:

FRANKLIN D. JUSTICE, II, MAYOR

ATTESTED:

REBECCA HAMILTON, CITY CLERK