

## DUE DILIGENCE QUESTIONNAIRE

Date: December 3, 2018

To: Charles Town Utility Board  
Attention: Jane Arnett, Utility Manager

From: Crews & Associates, Inc.

Re: Due Diligence Governmental Bonds Questionnaire for the City of Charles Town (West Virginia) Combined Waterworks and Sewerage System Revenue Bonds, Series 2018 B (Bank Qualified)

As part of our regulatory requirements, Crews & Associates, Inc. (the “Underwriter”) must perform a “due diligence” inquiry with respect to the Preliminary Official Statement (the “POS”) for the above-referenced bonds (the “Bonds”). This questionnaire provides a general framework of topics for a due diligence call with the responsible officials of the Charles Town Utility Board (“CTUB”) and, to the extent applicable, the City of Charles Town, West Virginia (the “City”, and together with CTUB, the “Issuer”). The objective of the due diligence call is to verify that the POS prepared in connection with the offering of the Bonds provides a complete and accurate description of the Bonds and the Issuer. This questionnaire is designed to confirm and/or obtain information that will be used in the POS provided to potential investors who may invest in the Bonds. You may complete this questionnaire or provide verbal responses on the due diligence call and where applicable you may reference specific sections or information in the POS. If you choose to complete the questionnaire, please submit it to our counsel, Jackson Kelly PLLC, prior to the due diligence call.

### **I. PRELIMINARY OFFICIAL STATEMENT**

1. Please identify the City and CTUB officials and staff who have reviewed the POS.

(Jane Arnett Answered): Utility Manager, Assistant Utility Manager, City Manager, John Kunkle, Hoy Shingleton, and John Stump.

2. Based on such review, is the information true and correct in all material respects?

(Jane Arnett Answered): Yes.

3. Based on such review, is any information set forth in the POS, which could be material to an investor who may purchase the Bonds, inaccurate?

(Jane Arnett Answered): No.

4. Based on such review, is any information, which could be material to an investor who may purchase the Bonds, omitted from the POS?

(Jane Arnett Answered): No.

### **II. GENERAL AREAS OF INQUIRY**

1. To the best of your knowledge, do any conflicts of interest exist between the City or CTUB or the governing bodies’ members and parties to the financing?

(Jane Arnett Answered): No.

2. To your knowledge is there any legislation pending or proposed by the State legislature or City Council that could, if enacted, have a material impact on the CTUB’s finances or operations?

(Jane Arnett Answered): No.

3. How would you describe the relationship between the Board and CTUB senior management?  
(Jane Arnett Answered): Very good/excellent, lost a few senior board members, two members, and got a new chairman .  
(John Stump Answered): There is no reason to believe that the relationship will change from what it has been in the past.
4. How would you describe CTUB’s relationships with its customers?  
(Jane Arnett Answered): Very good.
5. How would you describe CTUB’s relationship with the City/City Council?  
(Jane Arnett Answered): Few new members, but good.

### **III. PENSION AND OPEB LIABILITIES<sup>1</sup>**

1. Are there any significant increases in annual costs expected in relation to CTUB’s participation in the City’s retirement plan or Other Post Employer Benefits (“OPEB”) plan, other than as currently described in the Preliminary Official Statement?  
(John Kunkle Answered): No significant increases expected, currently have PERS and OPEB.
2. Does the Issuer have any plans in place to address its unfunded OPEB obligations?  
(John Kunkle Answered): The Issuer has State level actuarial studies done each year and sets rates, which addresses both the OPEB and pension obligations.
3. Are the pension and OPEB data contained in the Preliminary Official Statement based on the most recent actuarial reports available?  
(John Kunkle Answered): Yes, all are in accordance with GASB 68 and 75.
4. Has the City or CTUB implemented GASBY’s Statement No. 67 on Financial Reporting for Pension Plans? For what fiscal year was it first applied?  
(John Kunkle Answered): CTUB does not implement GASB 67, but the City does, first applied in FY14.
5. In the annual audits for CTUB, there is a reoccurring Auditor note including a “Qualified Opinion” regarding the way CTUB records its OPEB liability. Does CTUB expect to continue to record the OPEB liability in this manner or will such liability be addressed to conform with generally accepted accounting principles?  
(John Kunkle Answered): Conforming.

### **IV. LEGAL MATTERS**

1. Please discuss any pending or threatened litigation against the City or CTUB which, if decided adversely against the City or CTUB, would have a material financial impact on the City, CTUB or its operations.  
(Hoy Shingleton Answered): None.
2. Is there any pending or threatened litigation challenging the rights of officers of the City or CTUB to their offices or the authority of the City or CTUB to collect revenues to repay the Bonds?

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<sup>1</sup> For defined benefit plans.

(Hoy Shingleton Answered): None with regard to CTUB. (John Stump Answered): None with regard to the City, the Rockwool suit has no effect on this financing.

3. Please discuss any pending audits, investigations, examinations or proceedings by the IRS, SEC, EPA or other state or federal governmental authority or agency, if any. Are there any regulatory or administrative issues or concerns affecting the Issuer? Have there been any communications, either in writing or orally, with the EPA, U.S. Department of Justice, or WVDEP regarding any potential violations, enforcement actions, or other issues with the System?

(Jane Arnett Answered): No.

4. To your knowledge, are there any material liabilities or unfunded contingencies that the City or CTUB has incurred or may be exposed to which could have a material financial impact on the City or CTUB (e.g., pending or threatened disagreements, conflicts, issues, or disputes with any City or CTUB vendor or defaults under any agreement to which the City or CTUB is a party)?

(Jane Arnett Answered): No.

5. Are there any resolutions or State or local governmental legislation of which we need to be aware that could affect the Bonds?

(Jane Arnett Answered): No.

6. Please discuss any anticipated impacts on the City or CTUB of the litigation involving ROXUL (Rockwool).

(John Stump Answered): The City and CTUB are not parties to the litigation, the only threat is that Rockwool does not proceed with the project and therefore, will not be a customer of CTUB and Building Commission bonds will not be issued for extension project.

## **V. TAX MATTERS**

1. Is the Issuer in compliance with all arbitrage rebate payment requirements under the Internal Revenue Code of 1986, as amended, as set forth in the Issuer's prior tax certificates?

(Jane Arnett Answered): Yes.

2. Has the Issuer been informed that any bonds or other debt obligations of the Issuer are being audited in order to determine whether the interest thereon is excludable from gross income of the holders thereof?

(Jane Arnett Answered): No.

3. Has the Issuer adopted Post-Issuance Compliance Policies and Procedures for Bonds to ensure compliance with requirements of the Internal Revenue Code of 1986, as amended?

(John Stump Answered): Yes.

4. Has the Issuer been audited by the Internal Revenue Service in the last 5 years?

(Jane Arnett Answered): No.

5. Who prepares the Issuer's rebate calculations? Are such calculations available for review?

(Jane Arnett Answered): David Decker from Decker & Company PLLC prepares the rebate calculations and yes, they are available for review.

## VI. CONTINUING DISCLOSURE INFORMATION

1. Please briefly discuss the procedures followed by the Issuer to ensure compliance with the continuing disclosure requirements. Who with the Issuer has the primary responsibility of ensuring compliance with prior and current continuing disclosure undertakings pursuant to Rule 15c2-12 (the “Rule”) and the Issuer’s responsibilities under the Rule as set forth in the POS?

(John Stump Answered): The City Manager has historically done this, but as a practical matter, the City does not have public bonds, so CTUB has done this for disclosure purposes.

2. Has the City and/or CTUB adopted a written Continuing Disclosure Policy? If yes, please provide a copy. How often is the policy reviewed for compliance?

(John Stump Answered): Yes, the City has adopted a written Continuing Disclosure Policy. The Policy is not reviewed consistently, but that is going to change going forward.

3. In connection with prior security offerings subject to the Rule, have any of the following 14 events occurred in the past five years with respect to the Issuer for which a notice of any such event was not filed with the required information repositories?

(John Stump Answered): Only Notices of Defeasance.

- a. principal and interest payment delinquencies;
  - b. non-payment related defaults, if material;
  - c. unscheduled draws on debt service reserves reflecting financial difficulties;
  - d. unscheduled draws on credit enhancements reflecting financial difficulties;
  - e. substitution of credit or liquidity providers, or their failure to perform;
  - f. adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
  - g. modifications to rights of holders of the security, if material;
  - h. security calls, if material, and tender offers;
  - i. defeasances;
  - j. release, substitution, or sale of property securing repayment of the security, if material;
  - k. rating changes;
  - l. bankruptcy, insolvency, receivership, or similar event of the Issuer or another obligated person;
  - m. the consummation of a merger, consolidation, or acquisition involving the Issuer or another obligated person or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
  - n. appointment of a successor or additional trustee or the change of name of a trustee, if material.
4. In the past five years, in connection with prior security offerings subject to 15c2-12, has the City or CTUB failed to make a timely continuing disclosure filing other than disclosed in the POS?

(John Stump Answered): No.

5. To the extent the City or CTUB has not substantially complied with its prior undertakings, what are the procedures in place to ensure compliance going forward? Has the City or CTUB considered engaging a third-party continuing disclosure agent?

(John Stump Answered): CTUB has hired DAC.

6. Has either the City or CTUB been contacted by the SEC regarding disclosure issues? Did the City or CTUB self-report or was the City or CTUB notified by an Underwriter that such Underwriter self-reported to the SEC pursuant to the MCDC Initiative any instance of non-compliance with continuing disclosure obligations relating to any bond issue? If yes, which bond issue and what action was taken?

(John Stump Answered): Yes, they did self-report, but unsure of which Bonds it was for.

## **VII. GENERAL**

1. Has the City or CTUB received from the auditors any management letters or areas of concern in the previous three (3) annual audits? If so, have the areas of concern been addressed? Are there any expected changes in the City or CTUB's auditors or management?

(John Kunkle Answered): There has been a continuing modification in the auditor's report about the OPEB's departure from GAAP, but that is no longer applicable with GASB 75.

2. Are there any new accounting standards that will be implemented with respect to the Fiscal Year 2018 or 2019 audits, and if so, how will they impact the City or CTUB's audit presentations? When will the Fiscal Year 2018 audit be available?

(John Kunkle Answered): FY 2018 audit available in the 1<sup>st</sup> Quarter of 2019. In 2018, the City/CTUB implemented GASB 75, which has no financial implications on operating expenses.

3. Other than matters covered by previous questions, please discuss the most significant challenges facing the City or CTUB over the next few years.

(John Kunkle Answered): CTUB has acquired Ranson's sewer and is going to acquire JCPSD, but there are no determined financial implications.

4. Please discuss any other significant factors or events affecting CTUB, its operations or its finances that have not been discussed but could be material to investors who may invest in the Bonds.

(John Kunkle Answered): There are various sewer projects going on, including the City of Ranson system, the JCPSD system, and rehabilitation to a treatment plant. Need to evaluate the cash flows and debt service coverage, but there is nothing financially significant to be detrimental.

(John Stump Answered): If Rockwool comes and asks CTUB to do the extension on the line and CTUB has to do an equity contribution, then they may need a rate adjustment.

## **VIII. FINANCIAL; DEBT; LIABILITIES**

1. Is the Issuer currently in compliance with all covenants and agreements relating to its outstanding debt obligations?

(John Kunkle Answered): Yes.

2. Has the Issuer ever defaulted in the payment of, or satisfaction of any covenant in connection with, any of its indebtedness?

(John Kunkle Answered): No.

3. Does the Issuer have any other financial obligations (loans, credit lines, etc.) outstanding other than its outstanding bond issues and the outstanding lease agreements described in the FY 2017 financial statements?

(John Kunkle Answered): The Issuer has a small bank loan with the Bank of Charles Town for the purchase of land and \$10,000 is currently outstanding. Also, advances have been made from the City to CTUB for water and sewer and repayment is current on that.

4. Please discuss CTUB's current capital improvement plan, including plans for acquisitions, projects, and financings by the Issuer within the next 48 months. Please include discussions of plans with respect to take over of Ranson's system and JCPSD.

(Jane Arnett Answered): A sewer strategic plan was updated in April 2018 for capital improvements and it is readjusted every three years. Also, CTUB has meetings on how all the systems will work together. Some of the systems/projects need to be added to the POS.

5. Please identify the revenue source used to support the Bonds and any legal contracts (e.g. Resale Customers) in place, if any to support that debt.

(John Kunkle answered): Water and sewer tariffs and customer charges.

6. Are revenues pledged to the payment of the Bonds segregated from other revenues of the City? Who maintains possession of segregated funds? Have such revenues been transferred to the City for other purposes under any circumstances?

(John Kunkle answered): The revenues are kept separate and placed in accordance with their bond issues. The revenues go straight to the utilities and the City does not touch them. Money has never been transferred to the City in the past except to repay the residual fund.

7. Please describe the City or CTUB's derivative financial instruments (including interest rate swaps or other hedging transactions), if any:

(John Kunkle answered): None.

8. Has the City or CTUB adopted a policy covering hedging transactions (e.g. interest rate swaps)? If so, please provide a copy of the policy.

(John Stump Answered): CTUB is not permitted to under State law.

9. Please discuss: (i) CTUB's FY 2019 adopted budget and its year-to-date performance as it relates thereto and (ii) CTUB's financial forecast for the next fiscal year.

(John Kunkle answered): CTUB performed a FY 2019 and FY 2020 forecast including the acquisition of Ranson and JCPSD and nothing detrimental was found.

(Jane Arnett Answered): FY 2019 budget did not include Ranson, will revise to adjust the customer rate.

10. Please discuss any changes in CTUB's auditors in the last five years and the reasons for that change.

(John Kunkle Answered): Perry & Associates has done the auditing the past few years, but the auditors change because the State has control over the audit process.

11. Do you expect any change in the CTUB's water and sewer rates in the upcoming fiscal year? Next three fiscal years?

(John Kunkle Answered): It is yet to be decided.

(Jane Arnett Answered): Yes, for the sewer, it will have to go up about 5% to equal Ranson's rate.

12. Please generally describe the System's operating revenue history for the past five years and YTD results for the present fiscal year. Have there been any recent changes in the trend of collection of System revenues?

(John Kunkle Answered): No significant changes, revenues are slightly down because it has been a wet year.

13. Since the date of the System's most recent audited financial statements has there been any change in the financial status of the System affecting its ability to pay the Bonds or other obligations paid from and secured by revenues of the System?

(John Kunkle Answered): None.

14. What is the plan for escrow and payment of the JCPSD bonds?

(John Stump Answered): Proceeds will be deposited into the MBC Sinking Funds. The pay date is January 15, 2019, and the payoff amount will take into account current funds with JCPSD.

## **IX. USER INFORMATION**

1. Does the POS accurately describe the Issuer's top employers and the System's top users? Do you have any knowledge regarding the employers/users that would affect their operation? Are there any concerns about the financial condition of any of the top ten employers/users?

(Jane Arnett Answered): Yes accurate, no knowledge regarding employees/users, and no concerns.

2. Has the Issuer experienced any significant loss/gain of principal employers/users in the last three years?

(Jane Arnett Answered): None.

3. Has there been volatility in use for the users? What was the reason?

(Jane Arnett Answered): Only volatility due to having a very wet year and the Racetrack decline due to the Maryland gaming industry. Other than that, everything is the same.

4. Is there a significant concentration of top employers or users in a single industry or business and CTUB service area?

(Jane Arnett Answered): The top user is the Racetrack and the second largest user is CTUB.

5. Is CTUB aware of any matters (e.g., relocation or closure of a major property owner, employer or user) which may have a materially adverse impact on the operation of the System?

(Jane Arnett Answered): No.

6. Discuss the anticipated impact of construction of the ROXUL (Rockwool) plant and related project on CTUB. Financing? Number of customers? Timeline?

(John Stump Answered): Only the revenues from the extension line will pay for the line. Then after the extension line is complete, it will be transferred to CTUB. However, CTUB is not obligated to make payments for the extension line. There are 6 miles of extension line so there will be a lot of customers added.

7. Discuss the anticipated impact of construction of the former JCPSD sewer extension project. Financing? Number of customers? Timeline?

(John Stump Answered): Must determine how to structure the Flowing Springs project. It is a \$5 million project and it depends on ROXUL and Jefferson County's future growth.

**X. THE SYSTEM**

1. Please describe the Project to be financed with the proceeds of the Bonds and the impact of the Project on the System and the day-to-day operations.

(John Stump Answered): The proceeds of the Bonds will be used to acquire the water and sewer systems of the JCPSD and then to dissolve the JCPSD. CTUB will get about 2,700 new sewer customers and over 200 new water customers.

2. Discuss generally the various rates, fees, charges and other sources of revenue for the services and programs provided by the System and the procedures for determining and setting the amount of such rates, fees and charges. In your answer, please discuss (a) the process the System undertook in establishing rates, fees and charges and reasons therefor, (b) any written policies regarding the rates, fees and charges the System has adopted, (c) the process for adjusting the rates, fees and charges, (d) any trends that may increase or decrease revenues for the System, (e) whether any sensitivity tests have been run on the rates, fees and charges and the future projections, and (f) any weak spots in the projections and any anticipated difficulties in achieving the anticipated revenues.

(John Stump Answered): CTUB is exempt from PSC oversight with regard to rates and capital projects outside the ordinary course of business. The process is that a sensitivity analysis will be done at least annually. Also, there is no City Council written policy regarding rate raises, but City Council has that authority.

3. Please describe the general condition of the facilities of the System. In your answer please describe (i) any problems that the System is experiencing with its facilities (other than problems cured by ordinary maintenance), (ii) any material improvements to the System's facilities that the System anticipates having to make in the near or medium term, and (iii) any plans to acquire, build or sell or otherwise dispose of any assets of the System.

(Jane Arnett and John Stump Answered): The facilities are in good condition, but any improvements would be done with the project money. Just did a water treatment plant update and are active in a leak pressure prevention program.

4. Please provide any reports, feasibility studies or similar documents related to the System's facilities.

(Jane Arnett Answered): The last Sanitary Survey was done in 2015 and is on the website and the next one will be done next week. Consumer Confidence Reports are on the website. However, the Strategic Plan is not on the website.

5. Please indicate any special hazards and environmental conditions that exist or may exist in connection with the System's existing facilities, assets and property, including the Project. If any, describe the process for obtaining the necessary permits and licenses necessary for the System to construct necessary improvements. For any licenses, permits, franchise approvals or other authorizations that have not yet been obtained, please describe the steps being taken to acquire them.

(Jane Arnett Answered): Will transfer and incorporate the JCPSD NPDES permit into a CTUB permit once City Council approves.

6. Please identify and describe any federal, state and local regulatory and environmental agreements/obligations the System has entered into or is subject to.

(Jane Arnett Answered): NPDES permit.

7. Please identify and describe any contracts, agreements, leases, deeds, settlements, decrees, etc. that are currently in effect or any amendments to prior documents that affect the System or the operation of its facilities, assets and other real and personal property, including the

Project, including any such contracts, agreements, leases, deeds, settlements, decrees, etc., relating to the Project that the System expects to enter into following the completion of the Project.

(John Stump Answered): CTUB has various main line extensions and will have to get agreements requiring reimbursement to developers. Also, there is a lease between the City and ROXUL.

8. During each of the last ten years, what percentage of Revenues came from Resale Water or Sewer Customers?

Skipped.

- a. Please provide information on the status (including, but not limited, to the expiration dates and any rate escalation formulas) of all of the contracts the Issuer has with each of the Resale Water or Sewer Customers.
- b. Please provide revenue information for each Resale Water or Sewer Customer, if any, which represents 2% or more of Revenues of the System.
- c. Please elaborate as to any information known or that should be known about any Resale Water or Sewer Customer's plans, if any, to disconnect from the System.
- d. Please provide copies of contracts with each Resale Water or Sewer Customers, if any, which represent 2% or more of Revenues.

9. Are there any pending or expected System management or environmental issues with the EPA or the State?

(Jane Arnett Answered): None.

10. Other than what is presented in the POS, is the System or any related governmental entity under any State or EPA order to upgrade facilities and are there any estimates of the associated upgrade costs?

(Jane Arnett Answered): No.

11. Are there any risk management/insurance issues with respect to the System?

(Jane Arnett Answered): No.

12. Does the Issuer maintain adequate insurance for the System? Please identify and describe the various insurance policies utilized by the System. In your answer please address whether the System carries insurance of the types and in the amounts carried by others in the same industry and describe what material risks, if any, the System does not insure against.

(Jane Arnett Answered): Yes.

13. Please provide an update on key personnel. Are any changes expected in the management team of the System? What will be the impact of the acquisition of JCPSD with respect to key personnel and management?

(Jane Arnett Answered): No changes expected. Already accounted for all changes.

14. Please describe employee relations within the System. Does the System anticipate any significant decrease in its workforce this year or beyond?

(Jane Arnett Answered): Will expect an increase from Ranson and JCPSD. Have told Council that those employees will be employed for at least two years.

15. With respect to the System, are there any current labor agreements? If so, are there any significant disputes under such labor agreements or under any contracts with any third parties?

(Jane Arnett Answered): No.

16. Do you think the operating and capital improvement budgets adequately take into account the costs of maintaining the System?

(Jane Arnett Answered): Yes.

17. Does the City have a Stormwater System/MS4 Permit?

(Jane Arnett Answered): No.

## **XI. CYBERSECURITY**

1. Has a cybersecurity incident occurred with the CTUB System within the last five years? If so, please describe the incident and actions taken to prevent further incidents.

Jane going to forward IT's response.

2. Is CTUB particularly vulnerable to, or attractive as a target for, cybersecurity attacks? Has CTUB established cybersecurity risk management policies and procedures and conducted associated training regarding cybersecurity risks and incidents?

Jane going to forward IT's response.

3. Does CTUB carry insurance against cybersecurity incidents? What is the coverage provided?

(Jane Arnett Answered): Insurance agent in Charleston has said that they do not need this but can price it if wanted. Going to discuss with CTUB.