

ORDINANCE NO. 7 \_\_\_\_\_ OF 1986

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF HARRISVILLE AUTHORIZING THE INCURRING OF LEASE RENTAL DEBT BY THE BOROUGH OF HARRISVILLE, BUTLER COUNTY, PENNSYLVANIA, BY THE EXECUTION OF AN AGREEMENT FOR THE PURPOSE OF GUARANTEEING A PORTION OF A NOTE HEREINBEFORE ISSUED BY THE PINE-HARRISVILLE AUTHORITY TO FIRST SENECA BANK IN THE PRINCIPAL AMOUNT OF \$600,000.00, BEING A PORTION OF THE LOCAL SHARE REQUIRED UNDER E. P. A. GRANT NO. C-421427-02 FOR THE CONSTRUCTION OF SANITARY SEWERS WITHIN THE BOROUGH OF HARRISVILLE, BUTLER COUNTY, PENNSYLVANIA AND A PORTION OF PINE TOWNSHIP, MERCER COUNTY, PENNSYLVANIA, AND AUTHORIZING THE ASSIGNMENT OF TAP-IN FEES AS ADDITIONAL SECURITY FOR SAID NOTE, FIXING THE FORM, DATE, INTEREST, CONDITIONS AND MATURITY THEREOF, PROVIDING FOR THE PAYMENT OF DEBT SERVICE THEREON UNDER THE CONDITIONS STATED, AUTHORIZING THE EXECUTION AND DELIVERY THEREOF, MAKING APPROPRIATIONS, DIRECTING THE PROPER BOROUGH OFFICIALS TO ADVERTISE THE ADOPTION OF THIS ORDINANCE IN A MANNER PROVIDED BY LAW AND TO SUBMIT THE REQUIRED DOCUMENTS TO THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AFFAIRS FOR APPROVAL.

WHEREAS, the Pine-Harrisville Authority, hereinafter called the "Authority", has undertaken the construction of a sanitary sewer system to provide sanitary sewer service for the Borough of Harrisville, Butler County, Pennsylvania, hereinafter called the "Borough" and to extend sanitary sewer service to several areas of the Township of Pine, Mercer County, Pennsylvania, hereinafter called the "Township", and

WHEREAS, the total estimated cost of said project is \$4,784,259.00, and in order to finance and pay for said project, the Authority has issued \$1,195,000.00 Guaranteed Sewer Revenue Bonds - 1986 ("Bonds") and has also

obtained a grant for construction from the United States Environmental Protection Agency, hereinafter called the "Grant", in the amount of \$3,168,600.00, which will be amended to equal 75% of the eligible bid costs, and

WHEREAS, the Grant payments to the Authority are received in designated payments, and

WHEREAS, the Authority has entered into various contracts for the construction of said project, and various amounts due under the payment schedules of the above contracts are expected to be owed to contractors prior to the actual receipt by the Authority of the Grant payments, and

WHEREAS, the Authority will require interim financing of \$600,000.00 in order to make said contract payments until the Grant payments are received by the Authority, and

WHEREAS, First Seneca Bank requires additional security in the form of guaranties of the loan by the Township and the Borough and the assignment by the Township and Borough of any and all tap-in fees that may yet be due and owing, which guaranties shall require the approval of the Department of Community Affairs after compliance by the Township and the Borough with the Local Government Unit Debt Act, and

WHEREAS, the Council of the Borough of Harrisville is authorized to incur lease rental debt pursuant to the Local Government Unit Debt Act No. 185 approved July 12, 1972, as amended, to guarantee repayment of a portion of the Pine-Harrisville Authority's Note issued to First Seneca Bank, and

WHEREAS, lease rental debt is proposed to be incurred by the Borough guaranteeing repayment of the sum of \$250,000.00 to First Seneca Bank, being

a portion of the Authority's Note to First Seneca Bank in the principal amount of \$600,000.00, and

WHEREAS, the Authority has received the proposal from First Seneca Bank to purchase its \$600,000.00 Note at private sale on terms more specifically hereinafter set forth, and

WHEREAS, the Borough, the Township and the Authority, each by Resolution, have deemed it in the best interests to negotiate the Note and the guaranty thereof at private sale.

NOW, THEREFORE, be it ordained and enacted by the Borough Council of the Borough of Harrisville, and it is hereby ordained and enacted by the authority of the same as follows: -

Section 1. The proper Borough officials are hereby authorized and directed to enter into and execute a Guaranty Agreement with the Authority guaranteeing \$250,000.00 of the Authority's borrowing in the total principal amount of \$600,000.00, being a portion of the local share of the Authority's sewer project and being incurred as lease rental indebtedness of the Borough. Said guaranty shall be designated as the "Guaranty Agreement - 1986".

Section 2. The Guaranty Agreement - 1986 shall guarantee \$250,000.00 of the indebtedness of the Authority. The indebtedness evidenced by the Guaranty Agreement - 1986 shall be in the maximum aggregate principal amount of \$600,000.00 and bearing interest from the earliest date of possible issue under the statutory time requirements as set forth in the Act at the rate of 85% of floating prime per annum (based on a year of 365 or 366 days, as the case may be), which shall be the prime interest rate announced from time to time by the Bank at its principal

office in Oil City, Pennsylvania, for a new 90 day loan to commercial borrowers of substantial size and high credit rating, however, in no event, shall the rate of interest exceed 11.38%. The principal and interest of said loan shall be repayable in full on September 1, 1987 at the offices of First Seneca Bank.

In the event, as a result of a change in existing statutes or in the interpretation or administration thereof by the Internal Revenue Service, it shall be determined (after First Seneca Bank has taken such steps as, in its reasonable judgment, shall be required to dispute such determination) that all or any portion of the interest thereafter received on the Note shall be subject to Federal income tax, the rate of interest payable on the Note thereafter shall be changed to such rate as may be negotiated by First Seneca Bank and Pine-Harrisville Authority, and if a rate cannot be agreed upon within thirty (30) days after a demand is made to negotiate, the Note and all sums unpaid or due shall become immediately payable. In addition, in the event such I. R. S. action shall require First Seneca Bank to pay Federal income taxes on interest received prior to the date of such I. R. S. action, within ninety (90) days after demand, the Pine-Harrisville Authority shall pay, during such period, as additional interest, an amount equal to the difference between the interest made subject to Federal income taxation and 100% of floating prime, fluctuating as aforesaid during the period that interest is taxed. The Pine-Harrisville Authority's obligation under the immediately preceding sentence shall survive payment in full of the Note but shall terminate with respect to any tax year of First Seneca Bank upon the expiration of the applicable statute of limitations relating to such tax year and, in any event, shall expire as to any such year if written notice of any claim for

such higher interest with respect to such tax year shall not have been received by the Pine-Harrisville Authority within seven (7) years after the close of such tax year .

Pine-Harrisville Authority shall reserve the right to anticipate any or all of the principal or interest due under said Note at any time prior to maturity without notice or penalty . The guaranty of the Borough of Harrisville shall be limited to \$250,000.00, and the Borough's obligation to make said payments shall be conditioned upon the failure of the Authority to make payments as required by the terms of their Note.

Section 3. The Guaranty Agreement - 1986 is hereby declared to be a general obligation of the Borough of Harrisville. The Borough hereby covenants that it shall include the amounts payable under its guaranty for each fiscal year in which said sums are payable in its budget for that year and shall appropriate such amounts to the payment of such debt service from its general revenues and further shall duly and punctually pay or cause to be paid the principal and interest thereon at the times and places and in the manner hereinbefore stated and according to the true intent and meaning thereof. For such proper budgeting, appropriation and payment, the full faith, credit and taxing power of the Borough of Harrisville is hereby irrevocably pledged.

The amount which the Borough hereby covenants to guaranty in each of the following fiscal years on the basis of an interest rate of 6.375% (85% of floating prime of 7.5%) is as follows: -

<u>Fiscal Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
1987	\$250,000.00	\$ 15,937.50	\$265,937.50

Section 4. The Guaranty Agreement - 1986 shall, as additional security for said loan, assign to First Seneca Bank any and all tap-in fees that may yet be due and owing the Borough which have not been previously assigned.

Section 5. The form of the Guaranty Agreement - 1986 shall be substantially in the form as attached hereto and marked Exhibit "A".

Section 6. The Guaranty Agreement - 1986 shall be executed by the Mayor and the President of Council of the Borough and its corporate seal shall be affixed thereto and attested to by the Borough Secretary/Treasurer. The Borough Secretary/Treasurer shall deliver said guaranty to the Authority on behalf of the Borough, and the Borough consents to the assignment by the Authority of its rights under the Agreement to First Seneca Bank. The Borough Secretary/Treasurer is further authorized and directed to prepare, verify, certify and file the Debt Statement required by the Local Government Unit Debt Act, as amended, and to file therewith all documentation and certifications required to evidence this obligation as a debt of the Borough.

Section 7. The Borough hereby establishes a sinking fund from the obligations under the Guaranty Agreement - 1986 hereby issued with the First Seneca Bank as sinking fund depository. The Secretary/Treasurer shall pay into a separate debt service account in the sinking fund for said obligation the necessary amounts to pay interest and principal on the guaranty obligation as the same comes due under the terms thereof. The proper Borough officials are authorized to arrange with said Bank for its services as sinking fund depository.

Section 8. The General Obligation Note - 1986 of the Authority was awarded and sold at negotiated private sale at par to First Seneca Bank in accordance

with its proposal dated September 24, 1986. The same being considered fair and reasonable under present market conditions. Such proposal, to the extent necessary, is hereby accepted by the Borough.

Section 9. The action of the proper officers and the advertising of a summary of this Ordinance as required by law in the Butler Eagle, a newspaper of general circulation, are ratified and confirmed. The advertisement in said newspaper of the enactment of this Ordinance is hereby directed within fifteen (15) days following the date of final enactment.

Section 10. All Ordinances or parts of Ordinances not in accord with this Ordinance are hereby repealed in so far as they conflict herewith.

Section 11. This Ordinance shall become effective after final passage and approval by the Mayor, where such approval is required.

ORDAINED and ENACTED this 6th day of October, 1986.

Attest:-

Linda J. Wagner  
Borough Secretary/Treasurer

BOROUGH OF HARRISVILLE

By Frank J. John (SEAL)  
Council President

Examined and approved by me this 6th day of October,  
1986.

Robert Jerry West  
Mayor



GUARANTY AGREEMENT - 1986

Entered into this 6th day of October, 1986, between the TOWNSHIP OF PINE, Mercer County, Pennsylvania, hereinafter called the "Township" and the BOROUGH OF HARRISVILLE, Butler County, Pennsylvania, hereinafter called the "Borough", parties of the first part, the "Guarantors",

A N D

FIRST SENECA BANK, with offices in Grove City, Mercer County, Pennsylvania, party of the second part, hereinafter called the "Bank".

WHEREAS, the Bank has purchased the General Obligation Term Loan Note - 1986 of the Pine-Harrisville Authority, hereinafter referred to as the "Authority", in the principal amount of \$600,000.00, and

WHEREAS, the Township has agreed to guarantee repayment of said Note, and the Borough has agreed to partially guarantee the repayment of said Note as hereinafter set forth.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS: -

1. The indebtedness evidenced by this Guaranty Agreement is the General Obligation Term Loan Note - 1986 of the Pine-Harrisville Authority in the maximum aggregate principal amount of \$600,000.00 and bearing interest from the earliest date of possible issue at the rate of 85% of floating prime per annum (based on a year of 365 or 366 days, as the case may be), which shall be the prime interest rate announced from time to time by the Bank at its principal office in Oil City, Pennsylvania, for a new 90 day loan to commercial borrowers of substantial size and high credit rating, however, in no event, shall the rate of interest exceed 11.38%. The principal and interest of said loan shall be repayable in full on September 1, 1987 at the offices of First Seneca Bank. In the event, as a result of a change in existing statutes or in the interpretation or administration thereof by the Internal Revenue Service, it shall be determined (after First Seneca Bank has taken such steps as, in its reasonable judgment, shall be required to dispute such determination) that all or any portion of the interest thereafter received on the Note shall be subject to Federal income tax, the rate of interest payable on the Note thereafter shall be changed to such rate as may be negotiated by First Seneca Bank and Pine-Harrisville Authority, and if a rate cannot be agreed upon within thirty (30) days after a demand is made to negotiate, the Note and all sums unpaid or due shall become immediately payable. In addition, in the event such I. R. S. action shall require First Seneca Bank to pay Federal income taxes on interest received prior to the date of such I. R. S. action, within ninety (90) days after demand, the Pine-Harrisville Authority shall pay, during

such period, as additional interest, an amount equal to the difference between the interest made subject to Federal income taxation and 100% of floating prime, fluctuating as aforesaid during the period that interest is taxed. The Pine-Harrisville Authority's obligation under the immediately preceding sentence shall survive payment in full of the Note but shall terminate with respect to any tax year of First Seneca Bank upon the expiration of the applicable statute of limitations relating to such tax year and, in any event, shall expire as to any such year if written notice of any claim for such higher interest with respect to such tax year shall not have been received by the Pine-Harrisville Authority within seven (7) years after the close of such tax year. Pine-Harrisville Authority shall reserve the right to anticipate any or all of the principal or interest due under said Note at any time prior to maturity without notice or penalty.

2. In consideration of the Bank making the loan of \$600,000.00 to the Authority, the Township of Pine hereby guarantees repayment of the Authority's General Obligation Term Loan Note - 1986 and any and all extensions or renewals thereof in accordance with the terms and conditions hereinafter set forth.

3. In consideration of the Bank making the loan of \$600,000.00 to the Authority, the Borough of Harrisville hereby guarantees the repayment of \$250,000.00 of the Authority's General Obligation Term Loan Note - 1986 and any extension or renewal thereof in accordance with terms and conditions hereinafter set forth. It is specifically understood and agreed that the guaranty of the Borough of Harrisville is a limited guaranty and shall not exceed the sum of \$250,000.00.

4. This guaranty is authorized to be issued by the Township and the Borough in accordance with the Local Government Unit Debt Act, as amended and further supplemented, and by virtue of an Ordinance of the Township of Pine duly enacted on October 7, 1986 and by an Ordinance of the Borough of Harrisville duly enacted on October 6, 1986 and the Debt Statements of authorized officers thereof, with the approval of the Department of Community Affairs of the Commonwealth of Pennsylvania. The same being a lease rental obligation of the Township and a lease rental obligation of the Borough.

5. It is hereby certified that all acts, conditions and things required to be done, happen or be performed precedent to and in the issuance of this guaranty or in the creation of the debt of which it is evidence have been done and performed in regular and due form and manner as required by law. It is further certified that this guaranty, together with all other indebtedness of the Township and together with all other indebtedness of the Borough, is not in excess of any constitution or of statutory limitations.

6. For the proper budgeting, appropriation and the prompt full payment of all the obligations under this guaranty, the full faith, credit and taxing power of the Township of Pine and the Borough of Harrisville are hereby irrevocably pledged.

7. It is further certified that the Township of Pine and the Borough of Harrisville have effectively covenanted to include the amount of the debt service on this guaranty in each fiscal year for which such sums are due in their budgets for that year and to appropriate such sums to the payment of such debt service and to periodically pay or cause to be paid the principal and interest thereon at the dates and places and in the manner stated herein according to the true intent and meaning hereof.

8. When the General Obligation Term Loan Note - 1986 of the Pine-Harrisville Authority, together with interest thereon, has been fully paid and discharged, then this Guaranty Agreement shall cease and terminate and shall no longer be of any effect.

9. As additional security for the General Obligation Term Loan Note - 1986 of the Pine-Harrisville Authority, the Township of Pine hereby assigns to First Seneca Bank any and all sewer tap-in fees that may yet be due and owing the Township which have not been previously assigned.

10. As additional security for the General Obligation Term Loan Note - 1986 of the Pine-Harrisville Authority, the Borough of Harrisville hereby assigns to First Seneca Bank any and all sewer tap-in fees that may yet be due and owing the Borough which have not been previously assigned.

IN WITNESS WHEREOF, and intending to be legally bound, the Township of Pine and the Borough of Harrisville have caused this Guaranty Agreement to be executed by their proper municipal officers and their common and corporate seals to be affixed hereto, attested by the Township Secretary/Treasurer and Borough Secretary/Treasurer, the date and year above written.

Attest: -

TOWNSHIP OF PINE

\_\_\_\_\_  
Township Secretary/Treasurer

By \_\_\_\_\_ (SEAL)  
Supervisor

By \_\_\_\_\_ (SEAL)  
Supervisor

By \_\_\_\_\_ (SEAL)  
Supervisor

Attest: -

BOROUGH OF HARRISVILLE

*Linda J. Wegner*  
\_\_\_\_\_  
Borough Secretary/Treasurer

By \_\_\_\_\_ (SEAL)  
Mayor

By *Mark A. Sak* \_\_\_\_\_ (SEAL)  
President of Council

Attest: -

FIRST SENECA BANK

\_\_\_\_\_

By \_\_\_\_\_ (SEAL)