

ORDINANCE NO. 3 OF 1987

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 \$300,000.00, 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 seventy-five percent (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 obtained interim financing of \$600,000.00 from First Seneca Bank at an interest rate of eighty-five percent (85%) of prime for which the Authority issued its Note dated November 12, 1986, hereinafter referred to as "Term Note - 1986", in the principal amount of \$600,000.00, which Term Note - 1986 was guaranteed by the Borough by its Guaranty Agreement dated November 12, 1986, hereinafter called "Guaranty Agreement - 1986", and

WHEREAS, the Authority's Term Note - 1986 in the principal amount of \$600,000.00 matured on September 1, 1987 at which time the outstanding principal balance due on said Note was \$189,796.16, and

WHEREAS, the Authority will require additional interim financing in the sum of \$300,000.00, of which amount \$189,796.16 shall be used to pay off the existing principal balance of the above referred to Term Note - 1986 and

the balance shall be used by the Authority to make payments on the contracts for the construction of the Authority's sanitary sewer project and to meet the Authority's obligations pending receipt of E. P. A. Grant payments, and

WHEREAS, First Seneca Bank, with offices in Grove City, Pennsylvania, has offered to loan the sum of \$300,000.00 to the Authority at an interest rate equal to eighty-five percent (85%) of prime, which loan is to be repaid in full on March 1, 1988, the proceeds of which shall be used as set forth above and for which the Authority intends to issue its \$300,000.00 Note designated as "Term Note - 1987", and

WHEREAS, First Seneca Bank requires additional security for said \$300,000.00 Term Note - 1987 in the form of guaranties of the loan by the Township and the Borough and the assignment by the Township and the 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, hereinafter referred to as the "Act", to guarantee repayment of the Pine-Harrisville Authority's Term Note - 1987 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,

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 ninety (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 March 1, 1988 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 Term Note - 1987 shall be subject to Federal income tax, the rate of interest payable on the Term Note - 1987 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 Term Note - 1987 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 one hundred percent (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 Term Note - 1987 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 Term Note - 1987 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 Term Note - 1987.

Section 3. The \$300,000.00 Term Note - 1987 is being issued by the Authority and partially guaranteed by the Borough for the purpose of providing funds to refund the Authority's Term Note - 1986 and to provide additional funds to be used by the Authority to make payments on the contracts for the construction of the Authority's sanitary sewer project and to meet the Authority's obligations pending receipt of E. P. A. Grant payments. The \$300,000.00 Term Note - 1987 shall, in part, provide funds to refund the \$189,796.16 outstanding principal balance and accrued interest of the Authority's \$600,000.00 Term Note - 1986, originally dated November 12, 1986 with a maturity of September 1, 1987 (the

refunding of the Term Note - 1986 being hereinafter referred to as the "Refunding Program"). The Refunding Program is for the purposes set forth in Section 1101(4) of the Act; namely, to refund the maturity of the principal balance of the Term Note - 1986, being \$189,796.16, plus accrued interest, from its existing maturity date of September 1, 1987 to a later maturity date of March 1, 1988, which maturity refunding is not subject to any of the limitations of Sections 1107 or 1103 of the Act. The balance of the proceeds of the \$300,000.00 Term Note - 1987, after the payment of the Refunding Program shall be used by the Authority to make payments on the contracts for the construction of the Authority's sanitary sewer project and to meet the Authority's obligations pending receipt of E. P.

A. Grant payments.

Section 4. The Guaranty Agreement - 1987 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>
1988	\$250,000.00	\$ 7,968.75	\$257,968.75

Section 5. The Guaranty Agreement - 1987 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 6. The form of the Guaranty Agreement - 1987 shall be substantially in the form as attached hereto and marked Exhibit "A".

Section 7. The Guaranty Agreement - 1987 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 8. The Borough hereby establishes a sinking fund from the obligations under the Guaranty Agreement - 1987 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 9. The Term Note - 1987 of the Authority was awarded and sold at negotiated private sale at par to First Seneca Bank in accordance with its proposal dated August 26, 1987, the same being considered fair and reasonable under present market conditions. Such proposal, to the extent necessary, is hereby accepted by the Borough.

Section 10. 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 11. All Ordinances or parts of Ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.

Section 12. This Ordinance shall become effective after final passage.

ORDAINED and ENACTED this 14th day of September, 1987.

Attest: -

BOROUGH OF HARRISVILLE

Linda J. Wagner  
Borough Secretary/Treasurer

By Frank D. John (SEAL)  
Council President

Examined and approved by me this 18th day of September,

1987.

Robert Terry West  
Mayor