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BOROUGH COUNCIL

BOROUGH OF ORWIGSBURG  
Schuylkill County, Pennsylvania

ORDINANCE  
No. 242  
Enacted: October 20, 1981

AUTHORIZING THE INCURRING OF NONELECTORAL DEBT BY THE BOROUGH OF ORWIGSBURG FOR THE PURPOSE OF REFUNDING THE GENERAL OBLIGATION NOTE WHICH PROVIDED FUNDS FOR A PROJECT CONSISTING OF IMPROVEMENTS TO THE WATER SUPPLY AND DISTRIBUTING SYSTEM; DETERMINING THE AMOUNT OF DEBT TO BE INCURRED IN RESPECT OF SAID PROJECT AS OF \$762,000; PROVIDING FOR THE EVIDENCING OF SUCH DEBT IN RESPECT OF SUCH PROJECT BY A GENERAL OBLIGATION BOND; DIRECTING THE ISSUANCE OF A GENERAL OBLIGATION BOND, SERIES OF 1981, IN THE PRINCIPAL AMOUNT OF \$762,000; DECLARING THE REALISTIC ESTIMATED LIFE OF SAID PROJECT; AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING WITH THE DEPARTMENT OF COMMUNITY AFFAIRS OF THE DEBT STATEMENT REQUIRED BY SECTION 410 OF THE LOCAL GOVERNMENT UNIT DEBT ACT, THE BOROUGH'S BORROWING BASE CERTIFICATE AND PROCEEDINGS TO EXCLUDE THE NONELECTORAL DEBT REPRESENTED BY THE BOND; PROVIDING FOR THE DATE, DESIGNATION, DENOMINATION, REGISTRATION, PLACE OF PAYMENT, NUMBER, MATURITY AMOUNT AND DATE, RATE OF INTEREST AND OTHER TERMS IN RESPECT OF SAID BOND; DECLARING THAT THE BOND SHALL BE PAYABLE OUT OF THE PROCEEDS OF A NOTE TO BE ISSUED TO THE FARMERS HOME ADMINISTRATION; ADOPTING A FORM OF BOND; AUTHORIZING THE PROPER OFFICERS TO EXECUTE SAID BOND; COVENANTING TO ISSUE BONDS IN THE EVENT A NOTE IS NOT ISSUED TO THE FARMERS HOME ADMINISTRATION; ESTABLISHING A CONSTRUCTION FUND; ESTABLISHING PREPAYMENT FEATURES; ASSUMING AND AGREEING TO PAY CERTAIN TAXES IF AND AS LEVIED ON THE PRINCIPAL OR INTEREST OF SAID BOND; COVENANTING TO PAY THE DEBT SERVICE ON THE BOND AND PLEDGING THE REVENUES OF THE WATER SYSTEM AND THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH FOR THE PAYMENT THEREOF; ESTABLISHING A SINKING FUND IN RESPECT OF SUCH BOND; PROVIDING FOR A SINKING FUND DEPOSITARY; REGISTRAR, PAYING AGENT, AND A FISCAL AGENT; RESTRICTING INVESTMENT OF THE PROCEEDS OF SAID BOND; ACCEPTING THE PROPOSAL OF PENNSYLVANIA NATIONAL BANK & TRUST CO. FOR THE PURCHASE OF THE BOND; SETTING FORTH THE FORM OF BOND AND REQUISITION FORM; AND REPEALING INCONSISTENT ORDINANCES.

WHEREAS, the Borough Council of the Borough of Orwigsburg (the "Borough") had heretofore determined that it was in the best interest of the Borough that the Borough undertook a project (the "Project") consisting of improvements to the Borough water supply and distribution system, said improvements to include modifications to an existing well, improvements to the distribution system, drilling and installation of facilities

for two new wells and connection of the new wells to the water system;  
and

WHEREAS, the Borough undertook said "Project" in accordance with Ordinance No. 238, enacted September 30, 1980; and

WHEREAS, the Borough Council undertook a financing in respect of the Project in accordance with the Local Government Unit Debt Act (the "Debt Act"), being Act No. 185 of the 1972 General Assembly of the Commonwealth of Pennsylvania, as amended and reenacted by Act No. 52 of the 1978 General Assembly of the Commonwealth of Pennsylvania; and

WHEREAS, in accordance with the Debt Act, the Borough Council has determined that the total estimated maximum cost of the Project is \$762,000; and

WHEREAS, the Borough received a loan commitment from the United States Department of Agriculture, Farmers Home Administration in the amount of \$762,000; and

WHEREAS, the Construction for said Project has been delayed so that it will be necessary to refund the General Obligation Note; and

WHEREAS, the Borough Council deems it necessary to issue a General Obligation Bond for the purpose of refunding the General Obligation Note; and

WHEREAS, utilizing the proceeds of the General Obligation Bond which are to be used for the refunding of the General Obligation Note is in accordance with the Debt Act Article XI, Section 1101(4); and

WHEREAS, the Pennsylvania National Bank & Trust Co. (the "Purchaser") was awarded the \$762,000 General Obligation Note, Series of 1980 and has offered to purchase the 1981 General Obligation Bond;

NOW, THEREFORE, the Borough Council of the Borough of Orwigsburg,

Schuylkill County, Pennsylvania, hereby ORDAINS and ENACTS that:

Section 1. The description of the Project set forth in the recitals hereto is hereby incorporated by reference and is hereby approved as if here recited at length. The Borough Council hereby designates the Project as a project for the financing of which it desires to incur debt of the Borough.

Section 2. The remaining realistic estimated useful life of the Project is hereby declared to be 49 years.

Section 3. For the purpose of providing funds for and toward the payment of the costs (as such term is used in the Debt Act) of the Project, the incurring of \$762,000 of nonelectoral debt by the Borough is hereby authorized. Such debt shall be evidenced by the issuance of a general obligation bond of the Borough in the amount of \$762,000 in principal amount (the "Bond"), such Bond to be sold and delivered as hereinafter provided.

Section 4. The President and Secretary of the Borough Council or the Vice-President or the Assistant Secretary in the absence of the President or the Secretary, or any duly appointed successor, as the case may be, are hereby authorized and directed to prepare, certify and file with the Department of Community Affairs, in accordance with the Debt Act. a certified copy of the debt statement required by Section 410 of said Act; and the President and Secretary of the Borough Council or the Vice-President or Assistant Secretary in the absence of the President or Secretary, or, in the alternative, an independent certified public accountant, are hereby authorized and directed to prepare and execute a certificate stating the Borough's borrowing base, as such term is defined in the Debt Act, for submission to the Department of Community Affairs; and Gilbert Associates,

Inc. is hereby authorized and requested to prepare the report required under Section 206 of the Act for the exclusion of nonelectoral debt for submission to the Department of Community affairs.

Section 5. The Bond shall be designated as the Borough's "General Obligation Bond, Series of 1981," shall be registered as to principal and interest, shall be dated as of the date of issue, and shall bear interest from such date, payable at the principal corporate trust office of the Paying Agent (as determined by Section 14 hereof) on the 15th day of each month, commencing December 15, 1981, at the rate of interest specified in Section 6 hereof. The Bond shall be payable out of the proceeds of the sale of a long-term promissory note to be issued to the Farmers Home Administration (the "FmHA Note") in respect of the Project or as specified by Section 8 hereof.

Section 6. The Bond shall mature upon issuance of the FmHA Note or on November 15, 1982, whichever occurs first, and shall bear interest at the rate of 8.50%.

Section 7. The form of Bond shall be substantially as provided by Section 19 hereof. The Bond shall be executed by the President or the Vice-President of the Borough Council, and shall have the corporate seal of the Borough of Orwigsburg affixed thereto, duly attested by the Secretary or Assistant Secretary (or any Acting Secretary appointed for such purpose) of the Borough Council. The President or Vice-President and the Secretary or Assistant Secretary (or any Acting Secretary appointed for such purpose) are further authorized and directed to deliver the Bond to the Purchaser of the Bond upon the terms and conditions hereinafter provided for such delivery and to execute and deliver such other documents and to take such other action as may be necessary or appropriate in order to effectuate the

issuance and sale of the Bond, all in accordance with this Ordinance and the Debt Act.

Section 8. The Borough hereby covenants to issue long-term general obligation bonds, revenue bonds or guaranteed revenue bonds, as appropriate (the "Bonds") if, for any reason, the Borough fails to issue the FmHA Note so that, in any event, the Bond shall be paid when due. The Borough hereby covenants that it shall, if and to the extent necessary, make such pledge of its water system revenues as may be necessary or appropriate to enable the successful sale of such Bonds. The proceeds of the sale of the Bonds will be used to retire the Bond on or before its due date.

Section 9. The proceeds of the Bond shall be used to redeem the General Obligation Note, and the proceeds of the General Obligation Note now held by the Fiscal Agent provided for in Section 14 shall continue to be held in a special account to be redesignated "The Borough of Orwigsburg, General Obligation Bond, Series of 1981 Construction Fund" (the "Construction Fund"), which Construction Fund shall be held separate and apart from all other funds of the Borough. Monies held in the Construction Fund shall be applied exclusively toward the costs of the Project, either directly or by reimbursement to the Borough fund or funds from which monies may be or have been expended for costs of the Project, including without limitations any costs of constructing, installing and equipping the Project; amounts payable to contractors and suppliers (including fees for designing the Project where designs are provided by the contractor or supplier); costs of labor, services, materials and equipment furnished to the Borough (including shipping costs); engineering and other professional fees, costs of insurance, fees and permits and utility charges, interest on the Note; and

costs of financing. Disbursements from the Construction Fund shall be made only upon receipt by the Fiscal Agent of requisitions, in substantially the form contained in Section 19 hereof, setting forth in reasonable detail the amounts to be disbursed, the payees, and the obligations in respect of which the disbursements are to be made.

Until paid out upon requisition for project costs, Bond proceeds, interest or income thereon or other amounts in the Construction Fund shall be held for the benefit and security of the holder of the Bond.

The Borough hereby covenants that all amounts remaining in the Construction Fund after completion of construction of the Project, including the proceeds of the FmHA Note and any other governmental loan or grant to the extent not inconsistent with the terms of said loan or grant, shall be applied to pay principal and interest on the Bond no later than November 15, 1982.

Section 10. The Bond shall be subject to prepayment prior to maturity at the principal amount thereof, plus interest accrued to the prepayment date, at the option of the Borough Council in whole or in part at any time. Any prepayment shall be made only upon notice of prepayment mailed postage prepaid, at least three days before the prepayment date. If the Borough Council shall have duly mailed such notice of prepayment and shall have provided funds for the payment of the principal portion of the Bond so called for prepayment and the interest thereon to the prepayment date, interest on such portion of the principal of the Bond so prepaid shall cease to accrue after said prepayment date.

Section 11. The principal of and interest on the Bond shall be payable without deduction of, and the Borough assumes and agrees to pay, any tax or taxes which the Borough or the Treasurer thereof may be required

to pay thereon or retain therefrom under or by virtue of any present or future law of the Commonwealth of Pennsylvania, except gift, succession or inheritance taxes.

Section 12. The Borough hereby covenants with the holder from time to time of the Bond outstanding pursuant to this Ordinance that it (i) shall include the amount of the debt service as specified in Section 19 hereof and incorporated herein by reference and any tax payable pursuant to Section 11 hereof on said Bond for the fiscal year in which such sum is payable in its budget for that year, (ii) shall appropriate such amount from its general revenues for the payment of such debt service and taxes covenanted to be paid and (iii) shall duly and punctually pay or cause to be paid from the sinking fund established pursuant to Section 13 hereof, or any other of its revenues or funds, the principal of the Bond and the interest thereon at the date and place and in the manner stated therein, according to the true intent and meaning thereof, and for such budgeting, appropriation and payment the Borough does hereby pledge its full faith, credit and taxing power. The Borough does hereby pledge all revenues from the water system for the payment of such debt service and taxes covenanted to be paid if and to the extent proceeds of the FmHA Note or the Bonds are insufficient to pay such debt service in full when due. As provided in the Debt Act, the foregoing covenants shall be specifically enforceable.

Section 13. There is hereby established a Sinking Fund to be known as "Sinking Fund, Borough of Orwigsburg General Obligation Bond, Series of 1981," into which the Borough covenants to deposit and into which the Fiscal Agent is hereby authorized and directed to deposit, on or before the 15th day of each month, commencing December 15, 1981, from amounts available in the Construction Fund, or, if amounts available in the Construction Fund

are insufficient for the purpose, from its general revenues, amounts sufficient to pay the interest due on that date and, on or before November 15, 1982, the principal on the Bond as provided in Section 6 hereof. All sums in the Sinking Fund shall be applied exclusively to the payment of said principal and interest covenanted to be paid by Section 12 hereof and the taxes covenanted to be paid by Section 11 hereof on the Bond as the same shall from time to time become due and payable and the balance of said money over and above the sum so required shall remain in the Sinking Fund, such balance to be applied in reduction of future required deposits or to the prepayment of the Bond before maturity as provided in Section 10 hereof subject, however, to withdrawal for investment or deposit at interest as authorized by law, which investments or deposits and interest thereon shall be held exclusively for the purposes of the Sinking Fund aforesaid. Said Sinking Fund shall be kept in a separate account at the principal office of the Sinking Fund Depository provided for in Section 14 hereof, until such time as the Borough Council by Ordinance shall provide for a similar separate account in another bank, trust company or bank and trust company located and lawfully conducting a banking or trust business in the Commonwealth of Pennsylvania. The said Sinking Fund Depository, without further authorization than is herein contained, shall pay from the moneys in the Sinking Fund the interest on and the principal of the Note, and the taxes covenanted to be paid thereon, if any, as and when the same shall become due.

Section 14. The Secretary of the Borough Council is hereby authorized and directed to contract with Pennsylvania National Bank & Trust Co., Pottsville, Pennsylvania, for its services as sinking fund depository (the Sinking Fund Depository), registrar (the "Registrar"), paying agent (the "Paying Agent") and fiscal agent (the "Fiscal Agent"), said Bank being here-



by appointed to such positions in respect of the Borough's General Obligation Bond, Series of 1981.

Section 15. The Borough hereby covenants with the holder from time to time of the Bond that it will make no use of the proceeds of the Bond which, if such use had been reasonably expected on the date of issue of such Bond, would have caused such Bond to be an "arbitrage bond" within the meaning of Section 103(c) of the Internal Revenue Code of 1954 and the regulations thereunder and that it will comply with the requirements of said Section and the regulations throughout the term of the Bond.

Neither the Treasurer nor any other official of the Borough shall make any investment inconsistent with the foregoing covenants.

Section 16. The Borough Council hereby finds that a private sale to the Government of the Bond by negotiation, because of the term and rate contemplated, is in the best financial interest of the Borough. The Bond shall be sold at negotiated sale upon receipt of an acceptable proposal for the purchase thereof, which proposal shall be in compliance with provisions of the Debt Act.

Section 17. The proposal, presented to the Borough Council at a public meeting on the date of this Ordinance, of Pennsylvania National Bank & Trust Co. (the "Purchaser"), such proposal being dated October 9, 1981, and being in conformity with the requirement of Section 16 of this Ordinance for the purchase at negotiated sale of the Borough's \$762,000 General Obligation Bond, Series of 1981 at a price of \$762,000 is hereby accepted and the Bond is hereby awarded to the Purchaser. The Secretary of the Borough Council is hereby directed to notify the Purchaser of such action and to file a copy of said proposal with the records of the Borough. The officers of the Borough are hereby authorized to deliver the Bond to the Purchaser

upon receipt of the aforesaid purchase price and upon compliance with all conditions precedent to such delivery required by the Debt Act, this Ordinance and said proposal.

Section 18. All prior ordinances or parts thereof inconsistent herewith are hereby repealed.

Section 19. The respective forms of the Bond and the requisition form and the Debt Service Schedule in respect of the Bond shall be substantially as follows, the terms and conditions set forth in such forms being hereby incorporated by reference and adopted as if fully recited at length herein and said forms are hereby approved.