

BOROUGH OF ORWIGSBURG  
COUNTY OF SCHUYLKILL  
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. 437

AN ORDINANCE OF THE BOROUGH COUNCIL OF ORWIGSBURG BOROUGH, SCHUYLKILL COUNTY, PENNSYLVANIA, AUTHORIZING AND DIRECTING THE ISSUANCE OF A GENERAL OBLIGATION NOTE OF THIS BOROUGH AS NONELECTORAL DEBT IN THE MAXIMUM AMOUNT OF \$750,000.00 (THE "NOTE"), PURSUANT TO THE LOCAL GOVERNMENT UNIT DEBT ACT (THE "ACT"), WITH THE PROCEEDS OF THE NOTE TO BE USED AS FOLLOWS: (1) TO PROVIDE INTERIM FUNDING PENDING RECEIPT OF REDEVELOPMENT ASSISTANCE CAPITAL PROGRAM FUNDING FOR CAPITAL IMPROVEMENTS, AND (2) TO PAY THE COSTS AND FEES RELATED TO ISSUANCE OF THE NOTE; FIXING INTEREST, PAYMENT SCHEDULE AND MATURITY THEREOF; MAKING A COVENANT FOR THE PAYMENT OF THE DEBT SERVICE ON THE NOTE; PROVIDING FOR THE FILING OF THE REQUIRED DOCUMENTS UNDER THE ACT; PROVIDING FOR THE APPOINTMENT OF A SINKING FUND DEPOSITORY FOR THE NOTE; DESIGNATING SUCH NOTE AS A QUALIFIED TAX EXEMPT OBLIGATION OF THIS BOROUGH UNDER THE INTERNAL REVENUE CODE AND MAKING CERTAIN CERTIFICATIONS CONSISTENT THEREWITH; AND AUTHORIZING EXECUTION, SALE AND DELIVERY OF THE NOTE.

WHEREAS, the Borough of Orwigsburg, Schuylkill County, Pennsylvania (the "Borough"), is a Borough existing under laws of the Commonwealth of Pennsylvania (the "Commonwealth") and is a Local Government Unit, as defined in the Local Government Unit Debt Act, Act No. 185 of 1972, as reenacted, amended and revised by Act No. 177 of 1996, approved December 19, 1996, 53 Pa.C.S.A. Section 8001 *et seq.*, as amended, of the Commonwealth (the "Act"), acting by and through its Borough Council ("Borough Council"); and

WHEREAS, the Borough desires to acquire funds to be used as follows: (1) to provide interim funding pending receipt of Redevelopment Assistance Capital Program funding for capital improvements to the Borough's Veterans Memorial Community Hall in the amount of \$750,000 (the "RACP Grant"), as set forth in the Award Letter from the Pennsylvania Office of Budget, a copy of which is attached hereto as Exhibit "A", and (2) to pay certain costs and expenses related to the issuance of the Note (as hereinafter defined); and

WHEREAS, the Borough Council has determined to issue a general obligation note in the principal amount of \$750,000.00.00 (the "Note"), to be designated as "General Obligation Note, Series of 2019", dated on or about December 15, 2019, with proceeds from the sale thereof to be applied for the purpose of paying costs of a capital project, as hereinafter defined, and costs related to the issuance of the Note; and

WHEREAS, the Borough Council has determined that a private sale by negotiation is in the best financial interest of this Borough; and

WHEREAS, Manufacturers and Traders Trust Company, Wilkes-Barre, Pennsylvania (the "Purchaser"), has submitted a proposal for purchase of said Note, dated November 4, 2019 (the "Proposal"), a copy of which is attached hereto as Exhibit "B", and such Proposal has been opened, read and considered as required by the Act; and

WHEREAS, the Borough Council desires to accept the Proposal of the Purchaser, to award said Note to the Purchaser and to incur non-electoral debt, in the principal amount of \$750,000.00, in connection with the Project as hereinafter defined, pursuant to provisions of the Act.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Orwigsburg Borough, Schuylkill County, Commonwealth of Pennsylvania as follows:

Section 1. The Borough Council does authorize and direct the issuance of the Note as a general obligation note of this Borough, pursuant to this Ordinance, in the principal amount of \$750,000.00.00, in accordance with the Act, in the form of a non-revolving line of credit to provide funds for and toward payment of all costs and expenses of the Project, as hereinafter defined. The Borough Council of the Borough determines that the debt, of which the Note shall be evidence, to be incurred pursuant to this Ordinance, shall be non-electoral debt of the Borough.

Section 2. The Borough Council hereby determines the proceeds of the Note, together with interest earned thereon, to be used as follows: (1) to provide interim funding pending receipt of the RCAP Grant funding for capital improvements, and (2) to pay certain costs and expenses related to the issuance and insurance of the Note (all of which shall, taken together, constitute the "Project"). It is hereby certified that the Borough Council obtained preliminary cost estimates for the Project prior to incurring the debt. The period of useful life of the Project improvements for which the Note is to be issued is estimated to be in excess of five (5) years. It is hereby certified that the Note shall mature prior to the end of the useful life of the Project.

Section 3. The Borough Council determines that the Note shall be issued to Purchaser, at private sale, and accepts the Proposal of Purchaser to purchase the Note, and the Note is awarded to Purchaser in accordance with terms and conditions of the (the "Proposal"), the Purchaser having submitted such Proposal in accordance with provisions of the Act. The Borough Council hereby determines that the sale of the Note at private sale by negotiation is in the best financial interest of this Borough.

Section 4. The rate of interest applicable to the Note is a bank qualified tax-exempt rate on a 360-day basis. The interest rate will be variable based upon the Purchaser's prevailing one-month LIBOR Rate (rounded up to the nearest 1/16<sup>th</sup>) plus 1.413%. The rate will change every thirty (30) days and be fixed for 30-day periods. The interest rate floor is 2.450% and the interest rate ceiling is 4.500%. The Note shall mature on December 31, 2021, but in any event no later than one (1) year from completion of the Project.

Section 5. The Note shall be issued on or about December 15, 2019, shall bear interest from said date and may be prepaid by the Borough, in whole or, from time to time, in part, on any date, without payment of premium or penalty. The principal and interest on the Note shall be payable to Purchaser, or registered assigns, in lawful money of the United States of America at the place or places set forth in the Note according to the terms of the Note, as incorporated herein by reference.

Section 6. The form of the Note shall be substantially as set forth in Exhibit "C", attached hereto and incorporated herein by reference, with appropriate insertions, omissions and variations.

Section 7. The Note shall be executed in the name of and in behalf of the Borough by the President of Borough Council and attested by the Secretary or Assistant Secretary of the Borough Council, as appropriate, which shall include their duly qualified successors in office, if applicable.

Section 8. The Borough covenants to and with the holders, from time to time, of the Note, pursuant to this Ordinance, that the Borough shall include the amount of the debt service for each fiscal year of the Borough in which sums are payable in its budget for that fiscal year, shall appropriate such amounts to the payment of such debt service and duly and punctually shall pay or shall cause to be paid the principal of the Note and the applicable interest thereon on the dates and at the places and in the manner stated therein, according to the true intent and meaning thereof; and, for such budgeting, appropriation and payment, the Borough shall and does pledge, irrevocably, its full faith, credit and taxing power. As provided in the Act, the foregoing covenant of the Borough shall be enforceable specifically and this Ordinance shall constitute, for the purposes of this Covenant, both an agreement with Purchaser, or registered assigns, in accordance with the terms of the Act and a security agreement between the Borough and Purchaser, or registered assigns, creating a security interest in favor of Purchaser, or registered assigns, in the Borough's taxes and revenues pledged hereunder, in accordance with the Pennsylvania Commercial Code. The amounts of the debt service for each fiscal year of this Borough in which sums are payable are set forth on the Loan Amortization Schedule attached hereto as Exhibit "D" and incorporated herein by reference.

Section 9. The Borough acknowledges that that the purpose of the borrowing evidenced by the Note is to provide the Borough with interim financing pending receipt of proceeds from the RACP Grant and further covenants to and with the Purchaser, or the holders, from time to time, of the Note, pursuant to this Ordinance, that the Borough shall (i) apply, upon receipt, proceeds derived from the RACP Grant, for and toward payment of the outstanding principal and accrued interest, if any, on the Note, acknowledging that notwithstanding anything contained in this Ordinance to the contrary, the obligations of the Borough under the Note shall continue and be unaffected by a deficiency, if any, in the RACP Grant proceeds; (ii) submit to the Purchaser, or the holders, from time to time, of the Note, the Borough's financial reports within 180 days from the close of the Borough's fiscal year; (iii) comply with all conditions pertaining to the RACP Grant such that any deviations from the conditions without approval of the Commonwealth of Pennsylvania and the Purchaser, or the holders, from time to time, of the Note, will be considered an event of default under the Note; (iv) cause each advance to be approved and signed off on by the Borough's Manager and the Project engineer designated by the Borough; and (v) maintain the interim funds in a depository account with the Purchaser for convenient construction management while the Note is outstanding.

Section 10. There is created, pursuant to Section 8221 of the Act, a sinking fund for the Note, to be known as "Sinking Fund - General Obligation Note, Series of 2019" (the "Sinking Fund"), which Sinking Fund shall be administered in accordance with applicable provisions of the Act.

Section 11. Manufacturers and Traders Trust Company, Wilkes-Barre, Pennsylvania, is hereby appointed as Sinking Funds depository and Paying Agent. Proper officers of the Borough are authorized and directed to contract with said bank, for its services as Sinking Funds depository and Paying Agent.

Section 12. The Borough covenants to make payments out of the sinking fund created hereunder or out of any other of its revenues or funds, at such times and in the annual amounts, as shall be sufficient for prompt and full payment of all obligations of the Note when due.

Section 13. The Borough covenants to and with the Purchaser, or registered assigns of the Note, that it will make no use of the proceeds of the Note which, if such use reasonably had been expected on the date of issue of the Note, would have caused the Note to be an arbitrage bond. The Borough hereby designates the Note as a "qualified tax exempt obligation", as defined in and for purposes of Section 265(b) of the Code. With respect to obligations issued during the calendar year 2019, the reasonably anticipated amount of tax exempt obligations (other than obligations described in Section 265(b)(3)(c)(ii) of the Code) which have been or will be issued by the Borough during the 2019 calendar year does not exceed, in the aggregate, \$10,000,000.00. For purposes of the proceeding sentence, the term "Borough" includes the Borough, as well as all entities and aggregation of issuers set forth in Section 265(b)(3)(E) of the Code.

Section 14. The President or any officer of Borough Council and the Secretary or Assistant Secretary of the Borough Council, as appropriate, which shall include their duly qualified successors in office, if applicable, are authorized and directed: (a) to prepare, to verify or execute and to file the debt statement and borrowing base certificate required by Section 8110 of the Act; (b) to prepare or have prepared and to file, as required and if necessary, with the Department of Community and Economic Development (the "Department") of the Commonwealth, statements required by Sections 8024 or 8026 of the Act which are necessary to qualify any lease rental debt or nonelectoral debt of the Borough, which is subject to exclusion as subsidized debt or self-liquidating debt, for exclusion from the appropriate debt limit of the Borough; (c) to prepare, execute and file the application with the Department, together with a complete and accurate transcript of the proceedings relating to the incurring of debt, of which debt the Note, upon issue, will be evidence, as required by Section 8111 of the Act; (d) to pay or to cause to be paid to the Department all proper filing fees required by the Act in connection therewith; and (e) to take other required, necessary and/or appropriate action.

Section 15. Proper officials of the Borough are authorized and directed to deliver the Note, upon execution and attestation thereof as provided for herein, to Purchaser, but only upon receipt of proper payment of the balance due therefor, and only after the Department has certified its approval pursuant to Section 8204 of the Act, or has been deemed to have been given its approval pursuant to Section 8206 of the Act. It is declared that the debt to be incurred hereby, together with any other indebtedness of this Borough, is not in excess of any limitation imposed by the Act upon the incurring of debt by this Borough.

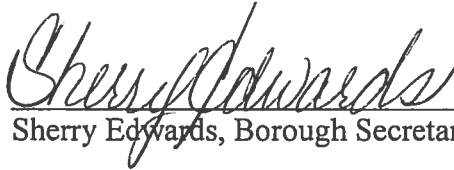
Section 16. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Borough that such remainder shall be and shall remain in full force and effect.

Section 17. This Ordinance shall be effective on the fifth day after the advertisement of the notice of enactment, as provided in the Act.

ORDAINED AND ENACTED this 13<sup>th</sup> day of November, 2019.

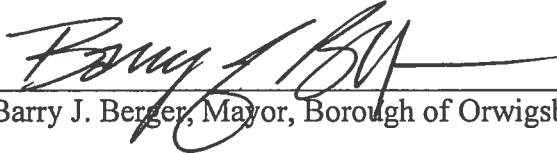
BOROUGH OF ORWIGSBURG  
Schuylkill County, Pennsylvania

ATTEST:

  
\_\_\_\_\_  
Sherry Edwards, Borough Secretary

By:   
\_\_\_\_\_  
Susan Murphy, President of Borough Council

EXAMINED and APPROVED this 13<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
Barry J. Berger, Mayor, Borough of Orwigsburg

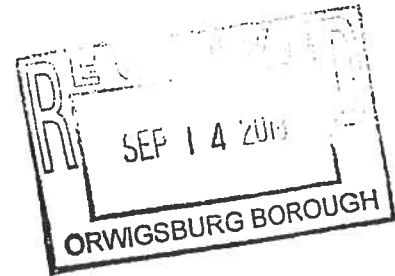
**EXHIBIT "A"**  
**RACP AWARD LETTER FROM PENNSYLVANIA**  
**OFFICE OF BUDGET, DATED SEPTEMBER 11, 2018**

See attached.



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE GOVERNOR

RANDY ALBRIGHT  
SECRETARY  
GOVERNOR'S OFFICE OF THE BUDGET



September 11, 2018

Ms. Michele Rudloff, Council President  
Orwigsburg Borough  
209 North Warren St.  
Orwigsburg, PA 17961

Dear Ms. Rudloff:

Governor Wolf has authorized the release of \$750,000 in Redevelopment Assistance Capital Program (RACP) funding for the Veterans Community Memorial Hall (2018) project in Schuylkill County. This project is eligible to receive funding via legislative authorization in the Capital Budget Project Itemization Act of 2017-052. Please note that RACP monies will not be paid out until (a) an RACP grant agreement has been fully executed between you and the Commonwealth, and (b) you have complied with all RACP program and grant agreement requirements as set out in the grant agreement and in the program guidelines.

This correspondence shall serve as written notification authorizing the preparation and submission to the Office of the Budget of a formal and complete Redevelopment Assistance application for the project. The Application Materials Handbook contains the necessary forms and instructions for the preparation of the application. The RACP application *must* be submitted in electronic format (PDF) via upload to an RACP FTP site. Hard copies or electronic copies *on a CD or Flash Drive* are no longer required. Access instructions to the FTP site, along with a unique Username and Password, will be *emailed* to you within approximately 3 weeks of receiving this letter. The RACP Application Handbook, available on our website (<http://www.racp.pa.gov>), contains the necessary instructions for the preparation of an application and provides the information you will need to upload it to our FTP site. Please note that *Special Conditions* are also now required to be submitted electronically as a PDF file via upload to the RACP FTP site. *Special Conditions* are outstanding documentation that is required to be submitted prior to an entity being eligible to receive grant funds. They are found in Appendix B of a typical RACP Grant Agreement.

As you are aware, RACP funding is intended to provide much needed economic stimulus to the Pennsylvania economy and it is intended to assist in the immediate creation of quality, family-sustaining jobs for Pennsylvanians. In completing the application for the RACP grant, please include sufficient information and documentation indicating this project's estimated economic impact and the potential for job creation. To be eligible for this award in accordance

**with RACP statutes, you must notify the Office of the Budget if you accept the grant within 30 days of receiving notification of approval via an official correspondence.**

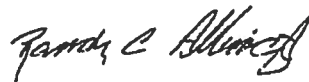
As one of the selected recipients of the limited amount of RACP funding available, your organization now has the significant responsibility of ensuring that these funds are utilized for economic development in a timely manner. Therefore, it will be the policy of this Administration to require that **all recipients of RACP funding MUST submit their application within six (6) months of the date of this letter.** Failure to submit the required RACP application within this timeframe may lead to the termination of any commitment of funding contained herein. It is important to note, however, that according to existing law, applicants must be able to demonstrate that at least 50% of the required non-state funds necessary to complete the project are secured at the time of the application. Failure to document the 50% non-state funds will preclude the Office of the Budget from accepting the application and drafting a grant agreement. It is also important to stress that a Resolution from the eligible applicant authorizing the submission of the application for Redevelopment Assistance Capital Grant funding should be provided as part of the application.

Additionally, once the grant agreement is fully executed for the RACP funding, your organization will then have a maximum of six (6) months to meet the terms and conditions of the grant agreement and begin construction of the project. Failure to begin construction of the project within six months of the final execution of the grant agreement may lead to the termination of the funding commitment.

Whereas this project has now been authorized to receive RACP funding, you should know that the grant agreement you will execute requires compliance with bidding and the payment of prevailing wage rates as a condition of the contract among other requirements. Questions about prevailing wage rates and how they may affect your project's construction contracts should be directed to the Bureau of Labor Law Compliance, Department of Labor and Industry at 717-787-4671. Failure to comply with these requirements may result in the loss of this funding and return of any funds already provided to your project by the Commonwealth.

Your assistance in this matter is greatly appreciated and the Commonwealth of Pennsylvania looks forward to working with you for the successful completion of this project.

Sincerely,



Randy C. Albright  
Secretary of the Budget



**EXHIBIT "B"**  
**MANUFACTURERS AND TRADERS TRUST COMPANY**  
**NOTE PURCHASE PROPOSAL, DATED NOVMEBER 4, 2019**

See attached.



Manufacturers and Traders Trust Company  
Government Banking  
15 South Franklin Street, 7<sup>th</sup> Floor  
Wilkes Barre, PA 18701  
(570) 821-7156 Fax (570) 821-8639  
Email: [rmcgowan@mtb.com](mailto:rmcgowan@mtb.com)  
Ryan McGowan, Vice President

November 4, 2019

Randall P. Miller  
Borough Manager  
Borough of Orwigsburg  
209 N. Warren Street  
Orwigsburg PA, 17961

**RE: Interim Financing for RACP Grant Project**

Dear Mr. Miller:

Manufacturers and Traders Trust Company ("*The Bank*") is pleased to extend a Non-Revolving Drawdown Line of Credit ("*The Line*") in the amount of \$750,000.00 to be issued by the Borough of Orwigsburg, Schuylkill County, Pennsylvania ("*The Borrower*") for the interim financing of the RACP Grant.

- 1) Amount of Note  
For up to \$750,000.00
- 2) Term of Note  
Maturity date on or before December 31, 2021, but in any event no later than one (1) year after completion of the project fund by the RACP Grant.
- 3) Type of Note  
Non-Revolving Drawdown Line of Credit
- 4) Purpose  
The purpose of this borrowing is to provide interim "bridge loan" financing for the RACP Grant along with paying interest on the Note; and paying the costs of issuance of the Note. The Borough has received a financing commitment in the amount of \$750,000.00 for the Project from the State of Pennsylvania Redevelopment Assistance Capital Program (RACP) Grant.
- 5) Rate of Interest Per Annum  
The Note shall (subject to the following terms) bear interest on the outstanding principal balance at a bank qualified tax-exempt rate on a 360-day basis. The interest rate will be variable based upon the Bank's prevailing one-month LIBOR Rate (rounded up to the nearest 1/16<sup>th</sup>) plus applicable spread. The rate will change every thirty (30) days and be fixed for 30-day periods. Currently, the one-month LIBOR rate is 1.771%; therefore, today's rate would be **3.236%**. The interest rate floor is 2.450% and the interest rate ceiling is 4.500%.
- 6) Repayment Terms  
Interest payments will be due quarterly. The outstanding principal and accrued interest will be due at maturity.
- 7) Security  
The Note will be issued by the Borough pursuant to and secured by a resolution duly adopted by the Borough and a Loan Agreement. In the Loan Agreement, the Borough will covenant to apply, upon receipt, proceeds derived from

the RACP Grant, for and toward payment of the outstanding principal and accrued interest, if any, on the Note. Additionally, in the Loan Agreement, the Borough will covenant and agree that the purpose of the borrowing and evidenced by the Note is to provide the Borough with interim financing pending receipt of proceeds from the RACP Grant; however, the obligations of the Borough under the Loan Agreement and under the Note shall continue and be unaffected by a deficiency, if any, in the RACP Grant proceeds

In addition, the Line shall be a general obligation of the Borough, payable from the general taxes and other general revenues of the Borough. The Borough shall covenant in the Ordinance that it will include in its budget for each fiscal year the amount of the debt service for that year of the Borough in which principal and/or interest on the Line is payable that it will appropriate from its general revenues in each such year, the amount of the debt service on the Line for such year and will duly pay or cause to be paid when due the principal of and interest due on the Line. For such budgeting, appropriation and payment, the Borough shall irrevocably pledge its full faith, credit and taxing power.

8) Covenants

The borrower will be required to submit to the bank its financial reports within 180 days from the close of the borrower's fiscal year.

The borrower shall have delivered to M&T Bank, sufficiently in advance of closing, all documentation and other information required by M&T Bank in accordance with all applicable banking laws and regulations in effect from time to time, including, without limitation, the USA PATRIOT Act. Any failure by Borrower or any necessary third party to deliver to M&T Bank, in a timely manner, any material information requested, or any misrepresentation or inaccuracy with respect to any such information received, or if M&T's Bank due diligence reveals that opening the accounts contemplated herein would potentially violate M&T's Bank regulatory compliance policies or applicable law, shall permit M&T Bank, in its sole discretion, to withdraw and/or cancel this financing proposal/offer without liability, and retain all fees."

9) Conditions

The \$750,000.00 facility closing is dependent upon the Borough providing the documentation with the RACP approval prior to the Note closing.

In addition, the Borough must comply with all conditions pertaining to the RACP financing. Any deviations from the conditions without approval of the State of PA and the Bank will be considered an event of default.

Lastly, each advance must be approved and signed off on by the Borough's Manager and project engineer.

10) Deposit Relationship

The Borrower shall agree to maintain the interim funds in a depository account with the Bank for convenient construction management while the note is outstanding. The specific terms will be discussed and mutually agreed upon prior to loan closing.

11) Prepayment Privileges

Borrower will have the option to prepay any portion of the outstanding principal of the note outstanding at any time without penalty.

12) Fees and Expenses

The standard origination fee will be **\$1,000.00** for this financing if the Bank will be preparing the necessary legal documentation associated with the borrowing.

The standard origination fee will be **waived** for this financing if the Borough will have their Solicitor prepare all legal documentation associated with the borrowing.

If closing does not take place, all costs and expenses shall be payable upon demand. The borrower agrees to indemnify the bank against all claims, which may be incurred in connection with this borrowing.

13) Preparation of Documents

The bank shall be listed as "Manufacturers and Traders Trust Company" in all documentation prepared by the borrower's legal counsel and delivered to the Bank at least seven days prior to closing for document review.

14) Acceptance to Advance

The above terms and conditions are intended to serve as an outline which may be negotiated and is intended for discussion purposes.

The definitive terms of the proposed Non-Revolving Drawdown Line of Credit will be more fully evidenced in the loan documentation including, but not limited to, a Note together with the other agreements, instruments, certificates and documents that M&T Bank may otherwise require.

The settlement of the Non-Revolving Drawdown Line of Credit is subject to several conditions. First the Borough and Bank will discuss, negotiate and accept the conditions of this letter as provided below. After receiving the Borough's acceptance, the Bank will confirm final credit approval of the transaction. Upon final approval, definitive Note Documents will be prepared. This letter is subject to the statutory and other requirements by which M&T Bank is governed.

This letter must be signed and delivered to the bank no later than the close of business on or before November 15, 2019; unless extended by the bank this offer may be removed from consideration by the bank.

On behalf of Manufacturers and Traders Trust Company, we are proud to partner with the Borough of Orwigsburg and look forward to funding the interim financing for the RACP Project. We sincerely appreciate the opportunity to assist the Borough with this meaningful project.

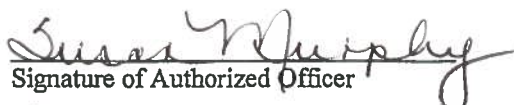
Should you have any questions, please do not hesitate to contact me at 570-821-7156.

Sincerely,



Ryan McGowan  
Government Banking Division  
Vice President

Accepted:

  
Signature of Authorized Officer

President  
Title of Signer

11/13/2019  
Date

**EXHIBIT "C"**  
**FORM OF GENERAL OBLIGATION NOTE, SERIES OF 2019**

See attached.

\$750,000.00

UNITED STATES OF AMERICA  
COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF SCHUYLKILL  
BOROUGH OF ORWIGSBURG  
General Obligation Note, Series of 2019  
Dated December 15, 2019

**BOROUGH OF ORWIGSBURG**, Schuylkill County, Pennsylvania (the "Issuer"), a borough existing under laws of the Commonwealth of Pennsylvania (the "Commonwealth"), for value received, promises to pay to the order of **MANUFACTURERS AND TRADERS TRUST COMPANY**, Wilkes-Barre, Pennsylvania (the "Purchaser"), the principal sum of SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) on the earlier of December 31, 2021 or one (1) year from the date of completion of the Project (as defined in the Ordinance), together with interest on the unpaid principal balance payable quarterly on March 15, June 15, September 15 and December 15 of each year beginning March 15, 2020, at a variable rate equal to 1.413 percentage points above the one-month LIBOR, adjusting daily, calculated on the basis of a 360-day year for the actual number of days of each year (365 or 366), provided, however, the interest rate shall not be less than 2.450% nor greater than 4.500%, and together with and all fees and costs (including without limitation the Purchaser's attorneys' fees and disbursements, whether for internal or outside counsel) the Purchaser incurs in order to collect any amount due under this Note, to negotiate or document a workout or restructuring, or to preserve its rights or realize upon any guaranty or other security for the payment of this Note. This Note may be prepaid by the Issuer, in whole or, from time to time, in part, on any date, without payment of premium or penalty, provided, however, that since this Note evidences a non-revolving line of credit, Issuer is not permitted to reborrow hereunder.

For purposes of this Note, each capitalized term shall have the meaning specified herein and the following terms shall have the indicated meanings:

- a. **"Benchmark Replacement"** means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Purchaser, giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for U.S. dollar-denominated syndicated or bilateral (i.e., single-lender) credit facilities, and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes hereof.
- b. **"Benchmark Replacement Adjustment"** means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that may be selected by the Purchaser from time to time, giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such

spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated or bilateral credit facilities at such time.

- c. **“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including, without limitation, changes to the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Purchaser decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Purchaser in a manner substantially consistent with market practice (or, if the Purchaser decides that adoption of any portion of such market practice is not administratively feasible or if the Purchaser determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Purchaser decides is reasonably necessary in connection with the administration of the loan(s) evidenced hereby).
- d. **“Benchmark Replacement Date”** means the earlier to occur of the following events with respect to LIBOR: (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein, and (b) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.
- e. **“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to LIBOR: (1) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; (2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or (3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.
- f. **“Benchmark Transition Start Date”** means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 180th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such

prospective event is fewer than 180 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Purchaser by notice to the Issuer, so long as the Purchaser has not received, by such date, written notice of objection to such Early Op-in Election from the Issuer.

- g. **“Benchmark Unavailability Period”** means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with this Section and (y) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to this Section.
- h. **“Early Opt-in Election”** means the occurrence of: (1) a determination by the Purchaser that currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) as a benchmark interest rate, in lieu of LIBOR, a new benchmark interest rate to replace LIBOR, and (2) the election by the Purchaser to declare that an Early Opt-in Election has occurred and the provision by the Purchaser of written notice of such election to the Issuer.
- i. **“Federal Reserve Bank of New York’s Website”** means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.
- j. **“LIBOR”** shall mean the rate per annum (rounded upward to the nearest 1/16<sup>th</sup> of 1%) obtained by dividing (i) the applicable London Interbank Offered Rate (see LIBOR Rate definition below) as set and administered by ICE Benchmark Administration Limited (or such other administrator of LIBOR, as may be duly authorized by the UK Financial Conduct Authority or such other proper authority from time to time) for United States dollar deposits in the London interbank market at approximately 11:00 a.m. London, England time (or as soon thereafter as practicable) on the appropriate day in accordance with the terms of this Note, as determined by the Purchaser from any broker, quoting service or commonly available source utilized by the Purchaser, by (ii) a percentage equal to 100% minus the stated maximum rate of all reserves required to be maintained against “Eurocurrency Liabilities” as specified in Regulation D (or against any other category of liabilities, which includes deposits by reference to which the interest rate on LIBOR Rate Loan(s) is determined, or any category of extensions of credit or other assets which includes loans by a non-United States’ office of a bank to United States’ residents) on such date to any member bank of the Federal Reserve System. Notwithstanding any provision above, the practice of rounding to determine LIBOR may be discontinued at any time in the Purchaser’s sole discretion. In the event and to the extent the applicable London Interbank Offered Rate index (“Index”) utilized for determining LIBOR shall, at any time, be less than zero percent (0.00%), such Index shall be deemed to be zero percent (0.00%) for purposes hereof (“Negative Index Restriction”). Notwithstanding the foregoing, to the extent an interest rate swap agreement (“Swap”) between Issuer and the Purchaser shall at any time be in effect in connection with the credit facility evidenced by this Note, the Negative Index Restriction shall not apply to such credit facility during such period as the Swap is in effect; provided, however, at such time and to the extent such Swap is terminated,



cancelled or otherwise not in effect, the Negative Index Restriction shall be deemed reinstated.

- k. **“London Business Day”** shall mean any day on which dealings in United States dollar deposits are carried on by banking institutions in the London interbank market.
- l. **“Maximum Principal Amount”** shall mean Seven Hundred Fifty Thousand Dollars (\$750,000.00).
- m. **“New York Business Day”** shall mean any day other than Saturday, Sunday or other day on which commercial banking institutions in New York, New York are authorized or required by law or other governmental action to remain closed for business.
- n. **“Outstanding Principal Amount”** shall mean, at any point in time, the aggregate outstanding principal amount of all Loans made pursuant to this Note.
- o. **“Relevant Governmental Body”** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.
- p. **“SOFR”** with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.
- q. **“Term SOFR”** means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.
- r. **“Unadjusted Benchmark Replacement”** means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

Notwithstanding anything to the contrary herein or in any other agreement related hereto, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Purchaser may unilaterally amend the terms hereof to replace LIBOR with a Benchmark Replacement. Any such amendment will become effective as soon as practicable for the Purchaser and upon notice to the Issuer, without any further action or consent of the Issuer, except that with respect to any amendment pursuant to an Early Opt-in Election, such amendment will become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Purchaser has provided such proposed amendment to the Issuer, so long as the Purchaser has not received, by such time, written notice of objection to such amendment from the Issuer. No replacement of LIBOR with a Benchmark Replacement pursuant hereto will occur prior to the applicable Benchmark Transition Start Date. Issuer shall pay all out-of-pocket costs (including reasonable attorney fees) incurred by the Purchaser in connection with any amendment and related actions contemplated herein. In connection with the implementation of a Benchmark Replacement, the Purchaser will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other agreement related hereto, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the Issuer. The Purchaser shall not be liable to the Issuer for any Benchmark Replacement Conforming Changes made by the Purchaser in good faith. The Purchaser will endeavor to promptly notify the Issuer of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming

Changes, and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Purchaser pursuant hereto, including, without limitation, any determination with respect to a tenor, rate or adjustment, or of the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action, will be conclusive and binding on the Issuer absent manifest error, and may be made in the Purchaser's sole discretion and without consent from the Issuer (except, in each case, as expressly required pursuant hereto) and shall not be a basis of any claim of liability of any kind or nature against the Purchaser, all such claims being hereby waived by the Issuer. Upon the Issuer's receipt of notice of the commencement of a Benchmark Unavailability Period, the Issuer may revoke (as applicable) any request for an Advance.

This Note is issued by Issuer to the Purchaser in connection with a certain line of credit made available by the Purchaser to Issuer (the "Credit") which, subject to all applicable provisions in this Note and in any and all other agreements between the Issuer and the Purchaser related hereto, may be advanced by the Purchaser from time to time (an "Advance") in reliance upon any oral, telephonic, written, teletransmitted or other request (the "Request(s)") that the Purchaser in good faith believes to be valid and to have been made by Issuer or on behalf of Issuer by the Borough Manager and signed off on by the Borough Engineer. The Purchaser may act on the Request of the Borough Manager until the Purchaser shall have received from Issuer, and had a reasonable time to act on, written notice revoking the authority of the Borough Manager. Issuer acknowledges that the transmission between Issuer and Purchaser of any Request or other instructions with respect to the Credit involves the possibility of errors, omissions, misinterpretations, fraud and mistakes, and agrees to adopt such internal measures and operational procedures as may be necessary to prevent such occurrences. By reason thereof, Issuer hereby assumes all risk of loss and responsibility for, and releases and discharges the Purchaser from any and all responsibility or liability for, and agrees to indemnify, reimburse on demand and hold Purchaser harmless from, any and all claims, actions, damages, losses, liability and expenses by reason of, arising out of, or in any way connected with or related to: (i) Purchaser's accepting, relying on and acting upon any Request or other instructions with respect to the Credit; or (ii) any such error, omission, misinterpretation, fraud or mistake, provided such error, omission, misinterpretation, fraud or mistake is not directly caused by the Purchaser's gross negligence or willful misconduct. The Purchaser shall incur no liability to Issuer or to any other person as a direct or indirect result of making any Advance pursuant to this paragraph. Any Request for an Advance hereunder shall be limited in amount, such that the sum of (i) the principal amount of such Request; and (ii) the Outstanding Principal Amount under this Note; does not exceed the Maximum Principal Amount under this Note. Notwithstanding the above, the Purchaser shall have the sole and absolute discretion whether to make any Loan (or any portion of any Loan) requested by Issuer, regardless of any general availability under the Maximum Principal Amount. In making any Request for an Advance, Issuer shall specify the aggregate amount of such Advance and the date such Advance is to be made; provided, however, if a Request is received by the Purchaser after 2:00 p.m. (Eastern Standard Time) on any given day, the earliest possible date of Advance will be the next New York Business Day. Delivery of a Request for a Loan shall be made to the Purchaser at such address designated by the Purchaser from time to time.

This Note has been authorized for issuance in accordance with provisions of the Local Government Unit Debt Act (the "Act") of the Commonwealth, and by virtue of a duly adopted Ordinance (the "Ordinance") of the Issuer. The Act, as such shall have been in effect when this Note was authorized, and the Ordinance shall constitute a contract between the Issuer and registered owners, from time to time, of this Note. The Purchaser shall have the right to exercise the remedies set forth in the Act. Any failure by the Purchaser to exercise any right or privilege hereunder shall not be construed as a waiver of the right or privilege, or to exercise any other right or privilege, at any time, and from time to time, thereafter.

The Issuer has covenanted, in the Ordinance, to and with registered owners, from time to time, of this Note that shall be outstanding, from time to time, pursuant to the Ordinance, that the Issuer: (i) shall include the amount of the debt service for this Note, for each fiscal year of the Issuer in which such sums are payable, in its budget for that fiscal year; (ii) shall appropriate such amounts from its general revenues for the payment of such debt service, (iii) shall duly and punctually pay or cause to be paid from the sinking fund established under the Ordinance or any other of its revenues or funds, the principal of this Note and the interest thereon at the dates and place and in the manner stated therein, according to the true intent and meaning thereof; and, for such budgeting, appropriation and payment, the Issuer has pledged and does pledge, irrevocably, its full faith, credit and taxing power; (iv) and shall provide its financial statement to the Purchaser annually within 180 days of its fiscal year end.

Issuer acknowledges that this Note is for the purpose of providing interim financing for funds the Issuer expects to receive from the Pennsylvania Redevelopment Assistance Capital Program in the form of a grant ("RACP Grant"). Issuer covenants, upon receipt of the RACP Grant funds, to apply all of the proceeds for and toward payment of the outstanding principal and accrued interest, if any, on the Note. Issuer acknowledges that its obligations under this Note shall continue and be unaffected by a deficiency, if any, in the RACP Grant proceeds. Issuer covenants to the bank to comply with all conditions pertaining to the RACP Grant. Any deviations from these conditions without approval from the Commonwealth of Pennsylvania shall be an event of default under this Note.

***The Note is a bank qualified tax-exempt obligation designated by the Issuer for the purposes and effect of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.***

If interest payable on the Note is determined at any point during the term of the loan not to be exempt from federal tax or it is determined that the Note served as an arbitrage bond under federal law, the Note will reset to its taxable equivalent rate, as determined by the Purchaser, and the Issuer shall pay to the Purchaser the difference between the amount of interest which the Purchaser should have received at the taxable rate and the actual amount of interest paid since the execution of the Note. The Issuer shall also pay any and all interest and penalties accrued by the Purchaser due to such determination of taxability.

No recourse shall be had for the payment of principal of or interest on this Note, or for any claim based hereon or on the Ordinance, against any member, officer or employee, past, present or future, of the Issuer or any successor body, as such, either directly or through the Issuer or any successor body, under any constitutional provision, statute or rule of law, or by enforcement of any

assessment or by any legal or equitable proceeding or otherwise, and all such liability of such members, officers or employees is released as a condition of and as consideration for the issuance of this Note.

This Note is transferable or exchangeable by the registered owner hereof upon surrender of this Note to Purchaser, at its principal office, accompanied by a written instrument or instruments in form with instructions, and with guaranty of signature satisfactory to the Issuer and Purchaser, duly executed by the registered owner of this Note or his attorney-in-fact or legal representative. Upon surrender, Purchaser shall enter any transfer of ownership of this Note in the registration books and shall reissue this Note to the transferee with notation of such registration written hereon. The Issuer and any paying agent designated by the Issuer may deem and treat the registered owner hereof as the absolute owner hereof (whether or not this Note shall be overdue) for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and the Issuer and any such paying agent shall not be affected by any notice to the contrary.


It hereby is certified that: (i) all acts, conditions and things required to be done, to happen or to be performed as conditions precedent to and in issuance of this Note or in creation of the debt of which this Note is evidence have been done, have happened or have been performed in due and regular form and name, as required by law; (ii) the debt represented by this Note, together with any other indebtedness of the Issuer, is not in excess of any limitation imposed by the Act upon the incurring of debt by the Issuer; and (iii) for the proper budgeting, appropriation, and the prompt and full payment of all the obligations of this Note the entire full faith, credit and taxing power of the Issuer is hereby irrevocably pledged.

The Issuer, in the Ordinance, has established a sinking fund into which funds for the payment of the principal of and the interest on this Note shall be deposited not later than the date fixed for the disbursement thereof. The Issuer has covenanted, in the Ordinance, to make payments from such sinking fund or from any other of its revenues or funds, at such times and in such annual amounts, as shall be sufficient for prompt and full payment of all obligations of this Note.

IN WITNESS WHEREOF, the Issuer has caused this Note to be executed in its name by the signature of the President of Borough Council, and a facsimile of its seal to be affixed hereto and the signature of the Secretary of Borough Council to be affixed hereto in attestation thereof, all as of the 15<sup>th</sup> day of December, 2019.

BOROUGH OF ORWIGSBURG  
Schuylkill County, Pennsylvania

ATTEST:

  
Secretary  
[SEAL]

By   
President, Borough Council



**ASSIGNMENT**

FOR VALUE RECEIVED, \_\_\_\_\_ (the "Transferor"), the undersigned, hereby sells, assigns and transfers unto

\_\_\_\_\_  
Name (the "Transferee")

\_\_\_\_\_  
Address

Social Security or Federal Employer Identification No. \_\_\_\_\_

the within General Obligation Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ as attorney to transfer the within General Obligation Note on the books kept for registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTICE: No transfer will be issued in the name of the Transferee, unless the signature(s) to this assignment correspond(s) with the name as it appears upon the face of the within General Obligation Note in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of Transferee is supplied. If the Transferee is a trust, the names and Social Security or Federal Employer Identification Numbers of the settlor and beneficiaries of the trust, the Federal Employer Identification Number and date of the trust and the name of the trustee should be supplied.

**EXHIBIT "D"**  
**DEBT SERVICE SCHEDULE**

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
03/15/2020	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
06/15/2020	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
09/15/2020	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
12/15/2020	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
03/15/2021	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
06/15/2021	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
09/15/2021	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
12/15/2021	\$ 8,437.50	\$ 0.00	\$8,437.50	\$750,000.00
12/31/2021	\$751,500.00	\$750,000.00	\$1,500.00	\$ 0.00