

BOROUGH OF ORWIGSBURG,
Schuylkill County, Pennsylvania

ORDINANCE NO. 303

AN ORDINANCE INCREASING THE NON-ELECTORAL INDEBTEDNESS OF THE BOROUGH OF ORWIGSBURG, SCHUYLKILL COUNTY, PENNSYLVANIA, BY THE ISSUE OF A GUARANTEED REVENUE NOTE IN THE AMOUNT OF TWO MILLION ONE HUNDRED SIXTY-FIVE THOUSAND FOUR HUNDRED FORTY-ONE (\$2,165,441.00) DOLLARS FOR THE PURPOSE OF FINANCING THE CONSTRUCTION OF A WATER FILTRATION PLANT AND EXTENSION OF THE DRINKING WATER SUPPLY SYSTEM OF THE BOROUGH; FIXING THE FORM THEREOF, NUMBER, DATE, INTEREST AND MATURITY THEREOF; MAKING A COVENANT FOR THE PAYMENT OF THE DEBT SERVICE ON THE NOTE; PROVIDING FOR THE FILING OF THE REQUIRED DOCUMENT; AND AUTHORIZING EXECUTION, SALE AND DELIVERY THEREOF.

WHEREAS, it is necessary that the indebtedness of the Borough of Orwigsburg, Schuylkill County, Pennsylvania, be increased for the following purposes: Construction of a water filtration plant and water line extension thereto of the Borough's drinking water supply system; and

WHEREAS, the Borough has received preliminary realistic cost estimates from professional consultants indicating the sum in excess of Two Million One Hundred Sixty-five Thousand Four Hundred Forty-one (\$2,165,441.00) Dollars will be needed to complete the Project; and

WHEREAS, the Borough desires to finance a portion of the cost of such Project by obtaining a loan from the Pennsylvania Infrastructure Investment Authority ("PennVest"); and

WHEREAS, PennVest has approved a Two Million One Hundred Sixty-five Thousand Four Hundred Forty-one (\$2,165,441.00) Dollar loan to the Borough to be used for the financing of the Project; and

WHEREAS, the proposed increase of debt, together with its nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the limitations of the Borough of Orwigsburg debt incurring power, pursuant to constitutional and statutory authority, to be exceeded;

WHEREAS, the Borough intends to issue its Note in accordance with the terms of this Ordinance and the Local Government Unit Debt Act, Act of July 12, 1972, P.L. 781 as re-enacted and amended (the "Debt Act"), to pay the cost of such loan.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough of Orwigsburg, Schuylkill County, Pennsylvania, and it is hereby ordained and enacted by the authority of the same as follows:

SECTION 1. That the aggregate principal amount of the note of the Borough of Orwigsburg, County of Schuylkill, Pennsylvania, proposed to be issued is Two Million One Hundred Sixty-five Thousand Four Hundred Forty-one (\$2,165,441.00) Dollars, same to be issued for the foregoing purposes and same to be incurred as nonelectoral debt.

SECTION 2. The period of useful life of the improvements for which this Note is to be issued is estimated to be in excess of twenty (20) years.

SECTION 3. Said indebtedness shall be evidenced by one guaranteed revenue note, in fully registered form, in the sum of Two Million One Hundred Sixty-five Thousand Four Hundred Forty-one

thereon on the dates and places and in the manner stated in the Note and in this Ordinance according to the true intent and meaning thereof, and for such proper budgeting, appropriation and payment, the full faith, credit and taxing power of the Borough is hereby irrevocably pledged as a guarantee.

SECTION 5. The form of said Note shall be substantially as follows:

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
ORWIGSBURG BOROUGH

GUARANTEED REVENUE NOTE

\$2,165,441.00

Harrisburg, PA

_____, 1991

FOR VALUE RECEIVED, ORWIGSBURG BOROUGH, a municipality organized and existing under the Borough Code, as amended, 53 P.S. Section 6501, et. seq., and authorized to enter into this Guaranteed Revenue Note ("Note") by the ordinance dated January 2, 1991, and Section 405 of the Local Government Unit Debt Act, 53 P.S. Section 6780-155, with a business address of Box 128, Orwigsburg, Pennsylvania, 17961, ("Maker"), promises to pay to the order of the PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY, a body corporate and politic organized and existing

under the laws of the Commonwealth of Pennsylvania with an office at 22 South Third Street, Harrisburg, Pennsylvania, 17101 ("Payee"), at such office of Payee, or at such other office of Payee or such other place as Payee may designate from time to time in writing, the principal sum of Two Million One Hundred Sixty-five Thousand Four Hundred Forty-one (\$2,165,441.00) Dollars (or so much thereof as has been advanced by Payee to or for the benefit of Maker pursuant to the Loan Agreement (as hereinafter defined)). lawful money of the United States of America, together with interest thereon from the date hereof at the rate hereinafter provided, and both payable as hereinafter provided.

1. Interest Rate. The principal sum outstanding from time to time hereunder shall bear interest at the rate of One Percent (1.000%) per annum for the first five (5) years and One and Seven Hundred Sixty-Seven Thousandths Percent (1.767%) per annum for the remainder of the twenty-year (20) term. The annual interest rate shall be calculated on the basis of a 360-day year by multiplying the interest rate in effect hereunder by a fraction, the numerator of which is the actual number of days the principal sum is outstanding and the denominator of which is 360.

2. Payments of Interest Only. Interest only on the unpaid principal sum following a loan advance to or for the benefit of the Maker pursuant to the Loan Agreement shall be payable in _____ monthly installments commencing on _____, 19____, and ending on _____, 19____, the calendar month preceding the Amortization Date ("Amortization Date").

3. Payments of Principal and Interest. On the Amortization Date, the unpaid principal sum then outstanding and all accrued and unpaid interest shall become due and payable as follows:

Principal and interest shall be payable in 240 consecutive monthly installments commencing on the first day of each calendar month beginning with _____, 19____, and continuing the first day of each calendar month thereafter to and including _____, 20____.

The principal and interest installments beginning on _____, 19___, and ending on _____, 19___, shall be in the amount of \$_____. On _____. 19___, principal and interest payments shall be in the amount of \$_____ and continue thereafter to and including _____, 20___. On _____, 20___, the unpaid principal sum then outstanding and all accrued and unpaid interest shall become due and payable.

4. Prepayments. Maker may prepay at any time all or any portion of the unpaid principal sum hereunder without penalty or premium; provided, however, that:

(a) Any prepayment (whether voluntary or involuntary) shall be applied first to any accrued and unpaid interest hereunder up to the date of such prepayment, then to any other sums which may be payable to Payee under the Loan Documents (as hereinafter defined) up to the date of such prepayment and then to the principal sum hereunder;

(b) Any such prepayment shall be applied to installments due hereunder in the inverse order of their maturity; and

(c) The acceptance of any such prepayment when there is an event of default in existence hereunder shall not constitute a waiver, release or accord and satisfaction thereof or of any rights with respect thereto by Payee.

5. Security. This Note, and the due performance by Maker of all of its obligations hereunder, is secured by, inter alia, a pledge of all of the gross revenues and receipts generated from or by the System and all other gross revenues and receipts as more fully set forth in Sections 2 and 3 of the Loan Agreement of even date between Maker and Payee ("Loan Agreement"), as well as the Borrower's full faith and credit and taking power. Reference is hereby made to the Loan Agreement for a full description of the security and the collateral pledged pursuant thereto, the

terms upon which this Note is secured, and the documents with respect hereto (each of which is hereinafter referred to individually as a "Loan Document" and collectively as the "Loan Documents"). Any collateral securing any of Maker's obligations under any of the Loan Documents are hereinafter referred to as "Collateral".

6. Late Charge. In the event that any payment of principal or interest due to Payee hereunder shall not be paid when due and shall remain unpaid in excess of thirty (30) days after the due date, in addition to and not in limitation of any other rights or remedies which Payee may have in respect thereof under any of the Loan Documents or in respect of any Collateral, Maker shall pay Payee on demand a "late charge" computed at the rate of four cents (\$.04) for each dollar (or part thereof) of the amount not paid, to cover the extra expense and inconvenience to Payee in ensuring payment of such delinquent amount. The amount of any such "late charge" not paid promptly following demand therefor shall be deemed outstanding and payable pursuant to this Note and secured by the Collateral.

7. Events of Default. In addition to any other event referred to herein, the occurrence of which, by the terms hereof, constitutes an event of default hereunder, the occurrence of any one or more of the following events shall constitute an event of default hereunder;

(a) Maker shall fail to make any payment of principal and/or interest due to Payee under this Note or under any of the other Loan Documents when the same shall become due and payable, whether at maturity or by acceleration or otherwise; and/or

(b) Maker shall fail to observe and perform any of the covenants or agreements on its part to be observed or performed under this Note or under any of the other Loan Documents within ten (10) days after notice from Payee of such noncompliance; and/or

(c) Any representation or warranty of the Maker under this Note or under any of the other Loan

Documents shall be untrue in any material respect when made; and/or

(d) Any event of default shall occur under the terms of any of the other Loan Documents.

8. Remedies. Upon the occurrence of any event of default, then the entire unpaid principal sum hereunder plus all interest accrued thereon plus all other sums due and payable to Payee under the Loan Documents shall, at the option of the Payee, become due and payable immediately without presentment, demand, notice of nonpayment, protest, notice of protest or other notice of dishonor, all of which are hereby expressly waived by Maker.

In addition to the foregoing, upon the occurrence of any event of default, Payee may forthwith exercise singly, concurrently, successively or otherwise any and all rights and remedies available to Payee under any of the Loan Documents or with respect to any Collateral, or available to Payee by law, equity, statute or otherwise.

9. Remedies Cumulative, etc..

(a) No right or remedy conferred upon or reserved to Payee under any of the Loan Documents, or with respect to any Collateral, or now or hereafter existing at law or in equity or by statute or other legislative enactment, is intended to be exclusive of any other right or remedy, and each and every such right or remedy shall be cumulative and concurrent, and shall be in addition to every other such right or remedy, and may be pursued singly, concurrently, successively or otherwise, at the sole discretion of Payee, and shall not be exhausted by any one exercise thereof but may be exercised as often as occasion therefor shall occur. No act of Payee shall be deemed or construed as an election to proceed under any one such right or remedy to the exclusion of any other such right or remedy; furthermore, each such right or remedy of Payee shall be separate, distinct and cumulative and none shall be given effect to the exclusion of any other. The

failure to exercise or delay in exercising any such right or remedy, or the failure to insist upon strict performance of any term of any of the Loan Documents, shall not be construed as a waiver or release of the same or of any event of default thereunder, or of any obligation or liability of Maker thereunder.

(b) The recovery of any judgment by Payee and/or the levy of execution under any judgment upon any Collateral shall not affect in any manner or to any extent the pledge of the borrower's revenues, or any security interest under the Loan Agreement in such Collateral, or any rights, remedies or powers of Payee under any of the Loan Documents or with respect to any Collateral, but such pledge and such security interest, and such rights, remedies and power of Payee shall continue unimpaired as before. Further, the exercise by Payee of its rights and remedies and the entry of any judgment by Payee shall not affect in any way the interest rate payable hereunder or under any of the other Loan Documents on any amounts due to Payee but interest shall continue to accrue on such amounts specified herein or in such Loan Document.

(c) Maker hereby waives presentment, demand, notice of nonpayment, protest, notice of protest or other notice of dishonor, and any and all other notices in connection with any default in the payment of, or any enforcement of the payment of, all amounts due under the Loan Documents. To the extent permitted by law, Maker waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. Maker further waives and release all errors, defects and imperfections in any proceedings instituted by Payee under the terms of any Loan Document or with respect to any Collateral.

(d) Maker agrees that Payee may release, compromise, forbear with respect to, waive, suspend,

extend or renew any of the terms of the Loan Documents (and Maker hereby waives any notice of any of the foregoing), and that the Loan Documents may be amended, supplemented or modified by Payee and the other signatory parties and that Payee may resort to any Collateral in such order and manner as it may think fit, or accept the assignment, substitution, exchange or pledge of any other Collateral in place of, or releases for such consideration, or none, as it may require, all or any portion of any collateral, without in any way affecting the validity of any lien over or other security interest in the remainder of any such Collateral (or the priority thereof or the position of any subordinate holder of any security interest with respect thereto); and any action taken by Payee pursuant to the foregoing shall in no way be construed as a waiver or release of any right or remedy of Payee, or of any event of default, or of any liability or obligation of Maker, under any of the Loan Documents.

10. Costs and Expenses. Following the occurrence of any event of default, Maker shall pay upon demand all costs and expenses (including all amounts paid to attorneys, accountants and other advisors employed by Payee and/or to any contractors for labor and materials), incurred by Payee in the exercise of any of its rights, remedies or powers under any of the Loan documents or with respect to any Collateral with respect to such event of default, and any amount thereof not paid on the first business day following demand therefor shall be added to the principal sum hereunder and shall bear interest at the rate of One Percent (1.000%) per annum for the first five (5) years and One and Seven Hundred Sixty-seven Thousandths Percent (1.767%) per annum for the remainder of the twenty-year (20) term from the date of such demand until paid in full, and shall be secured by the covenants in the Loan Agreement and all other Collateral. In connection with and as part of the foregoing, in the event that any of the Loan Documents are placed in the hands of an attorney

for the collection of any sum payable thereunder, Maker agrees to pay reasonable attorneys' fees for the collection of the amount being claimed under such Loan Document, as well as all costs, disbursements and allowances provided by law, the payment of which sums shall be secured by the covenants in the Loan Agreement and all other Collateral. Nothing in this Paragraph 10 shall limit the Maker's obligation to pay costs and expenses for which Maker is already liable under any other Loan Document.

11. Taxes, etc. Maker shall pay the cost of any revenue, tax or other stamps now or hereafter required by the laws of the Commonwealth of Pennsylvania or the United States to be affixed to this Note and if any taxes are imposed under the laws of the Commonwealth of Pennsylvania or the United States with respect to secured debts.

12. Severability. In the event that for any reason one or more of the provisions of this Note or their application to any person or circumstance shall be held to be invalid, illegal or unenforceable in any respect or to any extent, such provisions shall nevertheless remain valid, legal and enforceable in all such other respects and to such extent as may be permissible. In addition, any such invalidity, illegality or unenforceability shall not affect any other provisions of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. Successors and Assigns. This Note inures to the benefit of Payee and binds Maker, and their respective successors and assigns, and the words "Payee" and "Maker" whenever occurring herein shall be deemed and construed to include such respective successors and assigns.

14. Notices. All notices required to be given to any of the parties hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes when presented personally to such party or sent by certified or registered mail, return receipt requested, to such party at its address set forth below:

MAKER: Orwigsburg Borough
Box 128
Orwigsburg, PA 17961

PAYEE: Pennsylvania Infrastructure Investment
Authority
22 South Third Street
Harrisburg, PA 17101
ATTENTION: Executive Director

Such notice shall be deemed to be given when received if delivered personally or two (2) days after the date mailed if sent by certified or registered mail. Any notice of any change in such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived in writing by the party entitled to receive such notice.

15. Definitions; Number and Gender. In the event Maker consists of more than one person or entity, the obligations and liabilities hereunder of each of such persons and entities shall be joint and several and the word "Maker" shall mean all or some or any of them. For purposes of this Note, the singular shall be deemed to include the plural and the neuter shall be deemed to include the masculine and the feminine, as the context may require. The references herein to the Loan Documents or any one of them shall include any supplements to or any amendments of or restatements of such Loan Documents or any one of them.

16. Incorporation by Reference. All of the terms and provisions of the Loan Documents, to the extent not inconsistent herewith, are hereby incorporated herein by reference.

17. Captions. The captions or headings of the paragraphs of this Note are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Note.

18. Governing Law. This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, Maker has executed this Guaranteed Revenue Note the day and year first above written.

ATTEST:

BOROUGH OF ORWIGSBURG

Kathleen M. Consugar, Secretary
(SEAL)

BY: Clair E. Stoyer, President

SECTION 6. The said note shall be executed in the name and under the corporate seal of the Borough of Orwigsburg by the President and attested to by the Secretary.

The Treasurer is hereby authorized and directed to deliver said note to the purchaser, and receive payment therefor on behalf of the Borough of Orwigsburg. The President and Secretary of the Borough of Orwigsburg are authorized and directed to prepare, verify and file the debt statement required by Section 410 of Act 52 of 1978, and to take other necessary action, including, if necessary or desirable, any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 7. In compliance with Section 701 of the Act, the members of the governing body have determined that a private sale by negotiation rather than public sale is in the best interest of the Borough. Therefore, the Note in the amount of Two Million One Hundred Sixty-five Thousand Four Hundred Forty-one (\$2,165,441.00) Dollars, herein authorized to be issued and sold is hereby awarded and sold to the Pennsylvania Infrastructure Investment Authority in accordance with its proposal to purchase the said note at par.

SECTION 8. The action of the proper officers and the advertising of a summary of this Ordinance as required by law in The Pottsville Republican, a newspaper of general circulation, is ratified and confirmed. The advertisement in said paper of the enactment of the Ordinance is hereby directed within fifteen (15) days following the day of final enactment.

SECTION 9. The proper officers of the Borough are hereby authorized and directed to prepare, execute and deliver all other certificates, documents and instruments required to be submitted by the Borough pursuant to the terms of the proposal of the Pennsylvania Infrastructure Investment Authority and to take such other action as may be necessary or appropriate in order to effectuate the sale, issuance, execution and delivery of said Note.

SECTION 10. All expenses incurred in connection with the issuance of the Note are authorized to be paid upon submission of the appropriate invoices.

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

ORDAINED AND ENACTED THIS 2ND day of JANUARY,
1991.

ATTEST:

Kathleen M. Consugar Secy
Kathleen M. Consugar, Secretary
(SEAL)

BOROUGH OF ORWIGSBURG

BY: Clair E. Stoyer Pres
Clair E. Stoyer President

Approved this 2ND day of January, 1991.

W. A. Binne
MAYOR OF THE BOROUGH OF
ORWIGSBURG